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No. _____

IN THE

Supreme Court of the United States

October Term, 1982

EUGENE S. NEUFELD,

Petitioner,

-vs-

BRUCE BAMBROUGH, PRESIDENT
COMPUSCAN INC., et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

1. Does a district court's failure to review the pleadings, affidavits, record, and transcript before adopting a magistrate's report comply with the requirement of 28 U.S.C. § 636(b)(1) that a district judge make a de novo determination of matters referred to a magistrate?

2. Does the adoption of a magistrate's recommended decision without an independent de novo review by an Article III district judge constitute an unlawful delegation of judicial power to a non-Article III officer in violation of Article III?

3. Does a litigant who has invoked the power of an Article III court and has not consented to reference to a magistrate have a right, founded in the due process clause of the Fifth Amendment and in Article III, to a de novo determination and opinion stating reasons for denying relief from an Article III judge?

4. Does it violate the due process clause of the Fifth Amendment and Article III, and does it impermissibly burden the right of self-representation, for a court, routinely and without litigants' consent, to refer cases filed by pro se plaintiffs to magistrates for dispositions that effectively are final?

5. Does the Eleventh Amendment immunize state officials from liability for acting contrary to anti-discrimination statutes?

Parties in the Court of Appeals

BRUCE BAMBROUGH, *President, Compuscan, Incorporated;*

WARREN E. SMITH, *Director, New Jersey Division on Civil Rights;*

JOHN J. DEGNAN, *Individually and as Attorney General of New Jersey;*

ROBERT A. LEONARD, *Individually and as former President of Compuscan;*

VERNON N. POTTER, *Individually and as former Director, New Jersey Division on Civil Rights;*

STANLEY C. VAN NESS, *Individually and as the Public Advocate of New Jersey;*

NORBERT STEINBERGER, *Individually and as Executive Vice President of Compuscan;*

C. Y. AlSTON, *Individually and as BRANCH Manager, Paterson Office, New Jersey Division of Civil Rights;*

JOSEPH H. RODRIGUEZ, *as Chairman, Commission of Investigation, State of New Jersey;*

MARVIN WEISS, *Individually and as Vice President, Compuscan;*

JAMES SINCAGLIA, *Individually and as Chief, Bureau of Enforcement, New Jersey Division on Civil Rights;*

WILLIAM T. BURGIN, *Individually and as Director Compuscan;*

JUDITH E. RODNER, *Individually and as Deputy Attorney General for Civil Rights, New Jersey;*

MARTIN BRODY, *Individually and as Director, Compuscan;*

JUDITH S. MUSICANT, *Individually and as Deputy Director, New Jersey Division on Civil Rights;*

MICHEL R. BAILLEUL, *as Director Compuscan;* MICHAEL L. ALLEN, *as Director Compuscan;*

NORMAN FRANK, *Individually and as Vice President-Finance and Treasurer, Compuscan;*

SEYMOUR NAPS, *Individually and as Vice President Compuscan;*

JULIAN F. OLNEY, *Director of Compuscan;* JACOB MILLMAN, *Director of Compuscan;*

CAROL M. DARROW, *Individually and as Corporate Secretary of Compuscan;*

BARBARA BERGSTROM, *Individually and as Personnel Manager of Compuscan;*

MORGUERITE M. SCHAFFER, *Individually and as Attorney for Compuscan;*

GREENBERG, MARGOLIS *and* ZEIGLER; LEON, WEILL *and* MAHONEY; BESSEMER SECURITIES CORPORATION; COMPAGNIE PARTICIPATIONS et d'INVESTISSEMENTS HOLDINGS S.A. (C.P.I.H.); COMPUSCAN INCORPORATED;

and UNITED JERSEY BANK*

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* United Jersey Bank was served all papers but did not respond in the Court of Appeals.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

EUGENE S. NEUFELD,

Petitioner,

–vs.–

BRUCE BAMBROUGH, PRESIDENT, COMPUSCAN, INC., *et al.*

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Peitioner prays that a writ of certiorari issue to review the Judgment Order of the United States Court of Appeals for the Third Circuit.

Opinions Below

A memorandum order (Appendix B, A-3) of the United States District Court for New Jersey was filed on Feb. 28, 1980, adopting a magistrates Report and Recommendation.

No written opinion was rendered by the United States Court of Appeals for the Third Circuit.

The Report and Recommendation appears at Appendix C, A-6.

Jurisdiction

The judgment of the Court of Appeals for the Third Circuit was entered August 4, 1982 (A-1). An order denying a petition for rehearing en banc was filed on October 14, 1982 (A-49). An order extending the time in which to file a petition for a writ of certiorari to and including March 13, 1983, was signed on December 21, 1982. The jurisdiction of this Court is invoked pursuant to 28U.S.C.§1254 (1).

Constitutional and Statutory Provisions Involved

The Fifth Amendment to the Constitution of the United States provides,

> "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ."

Article III, Sec. 2 of the Constitution of the United States provides,

> that the "Judicial Power shall extend to all Cases, in Law and Equity, arising under . . . the laws of the United States. . . ."

The Magistrate's Act, 28USC§636(b)(1)(B) provides—

> "A judge of the Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."

The Eleventh Amendment of the Constitution of the United States provides

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, ...

The Fourteenth Amendment of the Constitution provides

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provision of this article.

All other referenced statutes appear in Appendix 0@A-242

STATEMENT OF THE CASE

There is an alarming tendency in the Federal Judicial system to relegate pro se litigants and others who bring certain kinds of disfavored claims to a perceived second class system of justice: their cases are referred in a wholesale fashion to magistrates, who are not Article III judges, and the district judges fail to perfom the sort of thorough and independent de novo review that is statutorily required by the magistrates Act, 28 U.S.C. §636 (b)(1)(B), and constitutionally mandated by Article III, see *U.S. v Raddatz*, 447 U.S. 667(1980) and *Wingo v Wedding*, 418 U.S. 461(1974). The inadequate attention paid by judges to certain classes of litigants distorts the purpose and integrity of the judiciary and creates a perception that the courts do not dispense justice to those disfavored groups who may most need the thoughtful attention of a fully qualified, independent Article III judge.

Petitioner Neufeld is one of thousands of such pro se civil rights litigants who has been railroaded through the Article III courts without receiving adequate attention from an Article III judge.

Petitioner sought the help of the courts to redress violations of his rights arising out of his retaliatory discharge by his employer, Respondent Compuscan. Petitioner, who was employed by Compuscan as a manager, was fired when he objected to instructions that he treat minority workers more leniently than others in terms of performance standards so that Compuscan could avoid civil rights complaints (A-187). Two minority workers did file complaints with the New Jersey Division on Civil Rights and the Equal Employment Opportunity Commission (E.E.O.C.) naming Compuscan and petitioner as defendants (A-188). Petitioner was never served with these complaints nor

was he otherwise notified of the actions against him (A-191). The attorneys who responded to the complaints purported to represent both Compuscan and petitioner, although they had never contacted petitioner and petitioner did not authorize them to represent him (A-191,250). Compuscan settled with the complainants, and the terms of the settlement placed the blame on petitioner and adversely affected his employment while giving pay raises to the complainants (A-160).

Petitioner attempted to file his own complaint, alleging reverse discrimination, with the New Jersey Division on Civil Rights (A-205). In plain contravention of their regulations that require them to accept and investigte all complaints, this agency refused to allow petitioner even to file a complaint (A-246,7). Petitioner then sought relief from the EEOC, and, acting without an attorney, followed erroneous instructions from a staff member about the timing of filing his complaint. As a result of this erroneous information, petitioner's complaint was dismissed filed out-of-time (A-178-80).

Petitioner, acting pro se, then filed a complaint and an amended complaint by way of right prior to expiration of 20 days or a responsive answer, in the District Court for the District of New Jersey against Compuscan, its president, the New Jersey Division on Civil Rights, the Attorneys who had represented him without authorization, and other defendants, see Amended Complaint at (A-163).

The amended complaint alleged violations of petitioners rights under Title VII, 42 U.S.C. §2000 (e); Title VI, 42 U.S.C. §2000(d); 42 U.S.C. §§1981, 1983, 1985 & 1986, and Violations of the Fifth, Thirteenth and Fourteenth Amendments. Due process, equal protection and equal rights violations and color/race/religion discrimination, and Deprivation of Rights under color of State Law, Conspiracy to interfere with Civil Rights and Neglect to prevent Conspiracy to interfere with Civil Rights (A-167). Although inarticulate as pro se complaints often are under the liberal pleading standards of *Haines v Kerner*, 404 U.S. 519(1919) the complaint could also be construed as stating pendant state law-based claims for retaliatory and unjust termina-

tion, tortuous interference with employment and for the state civil rights agency's failure to adhere to its own regulations.

Several defendants filed motions to dismiss pursuant to F.R.Civ.P. 12(b)(6). Without his consent the district judge referred petitioner's case to a magistrate for disposition pursuant to 28 U.S.C. §636 (b)(1)(B) and Local Court Rule 40. The magistrate held a hearing, purportedly only as to the motions brought by the state defendants. She advised petitioner that he did not need to address issues raised by other defendants.[1] At this hearing the magistrate denied petitioner's request for clarification of the pending motion to dismiss.[2] She refused to offer the pro se petitioner any guidance better to enable him to understand or address the matters confronting him.

After this hearing other defendants filed Rule 12 (b)(6) and 12(c) motions, and petitioner filed opposition papers and made repeated requests for leave to amend his complaint. These requests were all denied, despite the magistrate's obligation to liberally construe the pro se pleadings and offer assistance in framing them or presenting them to the court. In contradistinction to the harsh and unhelpful way the magistrate treated the pro se plaintiff, she suggested certain arguments to the state defendants, such as an Eleventh Amendment immunity argu-

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[1] *THE COURT:* "All right Mr. Neufeld, I realize that you're only prepared on the State's case, and we will have to renew this on another occasion to give you an opportunity to address yourself to the other matters, but I would like to hear you on the State's case, Mr. Neufeld, so that it won't be necessary for the State to send its attorney back."

(Transcript of Feb. 13, 1979, Appendix at, A-132).

[2] *MR. NEUFELD:* I would like to know if there would be a clarification as to the 28 U.S.C.§636 and Rule 40 of the local court.

THE COURT: What is that?

MR. NEUFELD: Concerning motions to dismiss and the authorities of the Magistrate because I think the Fifth Circuit had a ruling —.

THE COURT: This is the Third Circuit and this matter has been referred to me and I don't think that you have much room to question it, but the rules and the statutes do give you your directions for objecting to the report and recommendation that will be made, and you will follow these rules and these statutes.

THE COURT: I do not at any time advise counsel or litigants as to the law, nor do I clarify the law for counsel or litigants. (A-97).

ment, and invited them to supplement their pleadings and briefs.[3]

Without notifiying the pro se plaintiff, the magistrate converted the pending 12 (b)(6) motions to Rule 56 motions for summary judgment,[4] and on January 14, 1980 issued a report recommending that summary judgment be entered against petitioner on all counts (A-6). The magistrate's report contains numerous errors of fact, totally unsupported by the record. Moreover, at least two of the magistrate's legal conclusions have been overruled by this court, and on other matters, such as her refusal to accept pendant jurisdiction over the related state claims or to construe the pro se plaintiff's allegations liberally, her conclusions are contradicted by precedents of this court.

On February 11, 1980, petitioner filed timely objections to the magistrate's report and also to the entry of summary judgment without notice that 12(b)(6) motions would be treated as Rule 56 motions. Petitioner twice requested a de novo determination and asked for an opportunity to submit additional factual material in support of his objections (A-53 to 68). The district court scheduled a hearing on the report and objections, for February 25, 1980, but cancelled it without notice. Consequently, petitioner has never appeared before an Article III trial judge.

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[3] *THE COURT*: Now, the issues of immunity are not really contained in your brief in any detail, Mr. Gorrell, isn't that correct? (A-103)

THE COURT: Well, I do think that if you intend to supplement your brief, and raise these issues, as I certainly think they should be raised, you should submit a supplementary brief — we certainly want all of the issues disposed of at one time. That is, the issues that would ordinarily be made in the Rule 12 motions. — if you're talking about immunity under the Eleventh Amendment, as you may be, for some of these named defendants, I would appreciate having briefs on that — if you're using the Eleventh Amendment, you ought to dispose of that issue at this time. Let's put it all together instead of ticking it off a little now and a little later" (Transcript Feb. 13, 1979 @ A-104-6).

[4] In an AFFIDAVIT to the Magistrate Requesting the Status of the Motion to Dismiss, petitioner received no response from the Magistrate - Appendix @ page A-69 "3. In the Court's Discretion if the 12(b)(6) and 12(c) Motions are construed to be F.R.C.P.56 then several AFFIDAVITS OF FACT would be necessary to support Plaintiff's Opposition."

The district judge filed an order on February 28, 1980, adopting the Magistrate's Report, "for the reasons stated therein," (A-3). In plain contravention of his statutory and constitutional obligation to make a de novo determination of the magistrate's findings, the judge indicated that he had examined only the magistrate's report and the objections thereto. He did not examine the amended complaint or other pleadings, the briefs, the record, opposing affidavits, the transcript, or records of the company submitted by petitioner or documents submitted by the State. Thus, it is evident that the judge did not perform a de novo record review.

Petitioner filed a timely notice of appeal to the U.S. Court of Appeals for the Third Circuit challenging the failure of the court below to perform a de novo review, objecting to his failure to have received the adequate attention of an Article III judge, and to the entry of summary judgment without notice. He also challenged the numerous legal errors in the magistrate's conclusion. When the court of Appeals denied petitioner's request for oral argument, he wrote to the court to point out that in forty-six months of litigation in the Article III Federal Courts, he had yet to appear before or receive the adequate attention of an Article III judge. By telephone, petitioner was then notified that he would have 15 minutes of argument time two days hence, on July 23, 1982. It was evident at the argument, however, that the opportunity to present a statement was a pro forma attempt to palliate petitioner's desire to receive the attention of an Article III judge. Almost immediately thereafter, on August 4, 1982, the court of Appeals affirmed the lower court by judgment order, without opinion (A-1). The Court of Appeals also denied, without opinion, petitioner's motion for rehearing (October 14, 1982 A-49).

Concerned with his failure to receive, from any Article III judge, so much as a statement of reasons for denying his relief, on January 10, 1983, petitioner moved this court to order the Court of Appeals to issue an opinion. The motion was denied on January 11, 1983 (A-47).

REASONS FOR GRANTING THE WRIT

1. THE DISTRICT COURT'S FAILURE TO REVIEW ALL THE MATERIAL NECESSARY TO MAKE A DE NOVO DETERMINATION CONFLICTS WITH STANDARDS ADOPTED BY THIS COURT AND BY OTHER CIRCUITS, AND DOES NOT COMPORT WITH THE FEDERAL MAGISTRATE ACT OR WITH ARTICLE III.

This case presents an important opportunity to define the minimum standards for a constitutionally adequate adoption of an Article I Court's Report and Recommendation since the increasing use of Magistrates does not remain unquestioned as to the evasiveness of Article III protection. The Federal Magistrate's Act gave petitioner the right to a de novo determination of contested issues by a judge of the District Court. Such de novo review is statutorily mandated upon timely filing of objections, as is the case herein. A de novo determination means an independent determination unprejudiced by the magistrate's suggested findings.

The district judge failed to examine the amended complaint, the complaint or the pleadings. The judge did not review the motions, amended motions or look at the briefs or the government's supplementary brief, or petitioner's opposing, responsive papers. The judge did not inspect the record. He did not consider conflicting affidavits, or numerous materials and documents submitted by the government defendants and petitioner. Evidence obtained pursuant to the Freedom of Information Act from the E.E.O.C. and documents from the Security Exchange Commission on Compuscan, exist in the record. Thus by failing to review these items the judge could not possibly have made an independent de novo assessment of the case. It is obvious that he simply rubber stamped the conclusions of the magistrate. This sort of review is plainly inadequate to satisfy the statutory requirement of a de novo determination under the principles set down in prior Supreme Court cases and in opinions from other Circuit courts.

The Third Circuit's Affirmation of the District Court's adoption without de novo review of the Magistrate's Report, conflicts with this Court's decision in *U.S. v Raddatz*, 447U.S.667(1980). This Court held that the elements of a de novo determination were present where —

> "— the district court stated that it considered the transcript of the hearing before the magistrate on the motion to suppress, the parties proposed findings of fact, conclusions of law, and supporting memoranda and that it read the recommendation of the magistrate and heard oral argument of counsel — " id@672

In the instant matter this was not the case. The judge only reviewed the report and recommendation and petitioner's objections (A-4). An example of an appropriate independent review appears in *Mississippi v Arkansas*, 415U.S.289,291(1973). In *Mississippi*, supra this Court reviewed the entire record, the exceptions filed and the report and recommendation of a Special Master, the latter report being analogous and parallel to the Magistrate's Report in this matter. Moreover, in *Ohio v Kentucky*, 444U.S.335,336(1980) this Court enlarged the scope of a review to include hearings on exceptions filed to a Special Master's Report.

Circuit courts are clear in stating the required elements for a de novo determination of a magistrate's report. In *Coolidge v Schooner*, 637F2d1321,1327(9th, 1981) the Ninth Circuit held that a judge must make it clear that he reviewed the record and that he considered objections to findings of fact and conclusions of law. The judge's role in the proceedings cannot appear to be simply pro forma. That Circuit also requires the judge to have available the record of proceedings before the magistrate for a de novo determination to be made, see *Moran v Morris*, 665F2d900, 901 (9th, 1981) and that a de novo determination of the facts and conclusions of law must be made, *Campbell v U.S.D.C.*, 501F2d196,206 (9th, 1974) c.d. 419U.S.879, (1974). In the instant matter, as in *Moran*, supra @ 902, "This condition was not met here."

Proper standards are satisfied in the Seventh Circuit, when a de novo review is made of the proceedings before a magistrate,

the findings, the recommendations and the objections, see *Muhich v Allen*, 603F2d1247(7th, 1979). In *U.S. v Miller*, 609F2d336,340(8th, 1979) the Eighth Circuit held that it must be clear that the court reviewed the record and adopts findings and recommendations of a magistrate, only after an independent determination. That Court in *Duryea v Northwestern*, 602F2d809,810(8th, 1979) held a court's order to be deficient if it did not indicate it had considered or adopted a magistrate's conclusions of law. The Second Circuit prohibits "rubber-stamping" of a magistrate's report and requires examination of evidence, depositions, affidavits, testimony, etc. see. *C.A.B. v Carefree Travel*, 513F2d375,383 (2nd, 1975). The Fifth Circuit requires district courts to review the transcript of proceedings before a magistrate and to make a "de novo determination" of the magistrate's findings. *Calderon v Waco Lighthouse*, 630-F2d352,356(5th, 1980). In *U.S. v Lieberman*, 608F2d-889,901(1st, 1979) the First Circuit held that a "de novo determination" is made when there is argument on objections to findings with the record before the presiding judge. The Fourth Circuit holds that failure to review evidence presented to a magistrate is reversible error, and remands for a de novo review of factual objections raised, see *Orpiano v Johnson*, 687F2d44,48(4th, 1982). That Circuit holds that for satisfaction of the requirements of the Magistrates Act 28U.S.C.§636(b)(1)(B) a district judge must clearly indicate that he afforded the parties a de novo determination, see *Alcoa v U.S.E.P.A.*, 663F2d499,502(4th, 1981).

It is obvious that the Third Circuits' affirmance of the adoption of the magistrate's report conflicts with the First, Second, Fourth, Fifth, Seventh, Eighth and Ninth circuits. The legislative intent underlying 28U.S.C.§636(b) supports these numerous aforementioned Court decisions that requires judges to vigorously, conscientiously and thoroughly to review the record before adopting a magistrate's report. Such legislative intent meant that dispositive motions were to be reviewed by a de novo determination, when such matter was referred to a magistrate. See. S. Rep. No.94-625, p.6; H.R. Rep. No. 94-1609, p.8.

Congress was sensitive to Constitutional problems posed by too great a delegation of a district judge's functions to non-

article III officers. Congress concluded that a meaningful requirement for de novo review was necessary to avoid constitutional infirmaties surrounding the use of magistrates.

By affirming the district judge's obviously inadequate review of a magistrate's report, the Third Circuit decisions stands in contradiction to the standards adopted by the other Circuits. The Supreme Court should accept this case in order to establish that de novo review must be meaningful and real and thus to clarify the standards for an adequate de novo review that satisfies the magistrate's act.

2. ADOPTION OF A MAGISTRATE'S RECOMMENDED DECISION WITHOUT AN INDEPENDENT DE NOVO REVIEW BY AN ARTICLE III DISTRICT JUDGE CONSTITUTES AN UNLAWFUL DELEGATION OF JUDICIAL POWER TO A NON-ARTICLE III OFFICER.

This case offers a valuable occasion for the Supreme Court to explain the criteria for a Constitutionally adequate de novo determination by a district judge of a magistrate's decision so that the increasing use of a magistrate's does not further erode Article III.

This Court recently reemphasized in *Northern Pipeline v Marathon Pipeline*, 102S.C.2858(1982) that the requirements of Article III are to be strictly adhered to, and that the authority and jurisdiction of non-Article III judges is therefore extremely limited. As other past decisions of this Court indicate the use of magistrates, non-Article III judges is unconstitutional unless an Article III judge makes a de novo determination.

In *LaBuy v Howes Leather Co.*, 352U.S.249(1957) where the central concern of this Court's opinion was the danger of wholesale abdication of trial responsibility, (see 352U.S. @ 258-59, concern with distinct Article III overtones) — this Court held that neither congested dockets nor the duration of complexity of an action will suffice to justify a master's reference. Then Justice Douglas dissenting in *Glidden v Zdanok*, 370U.S.530(1962) indicated that Article I judges cannot sit or otherwise exercise authority of Article III Courts. He expressed concern over the

qualification of non-Article III judges to exercise judicial power. Following, *Glidden*, supra this Court in *Wingo v Wedding*, 418U.S.461(1974) found that while the Magistrate's Act empowered magistrates to perform a preliminary review of habeus corpus petitions and to formulate a recommendation as to whether an evidentiary hearing should be held, the Act did not authorize magistrates to conduct evidentiary hearings on habeus corpus petitions or to submit recommendations to the referring judge regarding appropriate disposition. Later, although declining to reach constitutional issues, this Court in *Mathews v Weber*, 423U.S.261,270-71(1976), concerning the "additional duties" of a magistrate intimated that Article III was satisfied because "[t]he authority and the responsibility . . . to make an informed, final determination . . . remains with the judge." In *U.S. v Raddatz*, 447U.S.667(1980) this Court found that a district judge's reliance on a magistrate's witness credibility determination in deciding a suppression motion did not violate Article III and that the magistrate's proposed findings and recommendations were subject to de novo review by the district court, which was free to rehear the evidence or to call for additional evidence. Id. @ 676-7,681-83.

The obvious impart of these decisions is that the district Court's determination should be real and thorough — not a pro forma rubber stamp. Otherwise, the district judge has actually delegated his Article III authority to a non-Article III officer, and has rendered illusory the requirement that Article III judges exercise the Authority in Article III Courts. Justice Marshall dissenting in *Raddatz*, supra @ 771 said. — "Vesting in the district court the power of final adjudication is a meaningless gesture where the district judge has no significant basis upon which to render his final decision." In this instant matter the district judge just reviewed the magistrate's Report and Recommendations and the filed objections (A-4). These alone provided no important basis for a decision because the judge neglected to review the reord, see Summary of Pleadings, (A-63). In such cases as the matter at bar the magistrate became the de facto pro forma final adjudicator.

These procedures below failed to preserve the judicial independence and thus the distribution of power under our Consti-

tutional system. They undermined the separation of powers principle by vesting judicial power of a scope equal to a district judge in a decision maker whose term of office and level of compensation are controlled by Congress. As an illustration of the dangers inherent in the practice of unscrutinized references, there remain numerous questionable aspects of the magistrate's decision. The magistrate's facts are unsupported by the record and the magistrate's rulings on the law are contrary to this Court's holdings and to rulings in Circuit Courts. (see Reason 4, pg. 18).

This Court sustained in *U.S. v Raddatz*, supra the use of adjunct fact finders even in the adjudication of constitutional rights—so long as those adjuncts were subject to sufficient control by an Article III Court. Here the magistrate became the judge, a complete substitute for the Article III Court. When adjudicating questions of law and not having been subjected to review by an Article III Court, the magistrate's decision became final. Thus, since there was an absence of the protective device of a de novo judicial review, the procedures below cannot be reconciled with Article III. Such utilization of an Article I officer is an unwarranted encroachment upon the judicial power of the United States, which the Constitution reserves for Article III Courts, see *Northern Pipeline*, supra. Failure to provide a de novo review in violation of the Magistrate Act is a grant of jurisdiction to an Article I officer that cannot be sustained under Article III constraints.

This Court should grant a writ of certiorari to decide what the established practice is for an adequate constitutional de novo determination of a magistrate's report.

3. A LITIGANT WHO HAS INVOKED THE POWER OF AN ARTICLE III COURT AND HAS NOT CONSENTED TO REFERENCE TO A MAGISTRATE HAS A RIGHT FOUNDED IN THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT AND IN ARTICLE III TO A DE NOVO DETERMINATION AND OPINION STATING REASONS FOR DENYING RELIEF UNDER AN ARTICLE III JUDGE.

The integrity of the Article III judiciary and litigant's right to an Article III judge are threatened by a process under which certain claims are repeatedly referred to magistrates and routinely disposed of without adequate review or opinions by Article III judges.

Article III has two recognizable components, see *Glidden v Zdanok*, supra. It protects the integrity, quality and independence of the judicial system and it also protects litigants by insuring that they will have a highly qualified and independent life-tenured judge decide their claims. Thus, *Glidden*, established a litigant's right to an Article III judge.[5]

ARTICLE III PROTECTIONS WERE REMOVED:

The Magistrate did not receive the power to proceed in this Article III case directly from Congress, said jurisdiction was vested in the District Court and transferred to the auxiliary legislative court (Article I). This scheme of internal delegation of judicial power presupposses supervision from the Article III court at some stage of the proceedings. Therefore, the Magistrate's Act permitted a non-Article III officer the exercise of broad civil jurisdiction customarily reserved for Article III courts.[6] The transference of this power within the Article III court structure, from the district judges to the magistrate's extended Congresses power to allocate jurisdictional compe-

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[5] "Article III Limits on Article I Courts:" Columbia L.R. Vol. 80:560, 1980, by L. Finley.

[6] Col. L.R. 8:560, 1980 @ 570.

tency between federal forums.[7] Such a procedure, the federal practice herein,[8] constituted a court and judge in whom was effectively vested the Judicial Power of the United States without compliance with Article III of the Constitution. This inferior court, possessing a full panoply of Judicial powers lacked the tenure and salary protections Article III requires. Deficient in Article III supervision and without constitutional protections the magistrate still had valid Judicial authority and powers undistinguishable from those of Article III judges and courts. Effective control of the proceedings was no longer with an Article III judge.

ARTICLE III ADJUDICATION WAS ABSENT

Petitioner's appearance before the Court of Appeals was not sufficient to satisfy the right to an Article III judge, because the right is to have a real judge evaluate claims at the *trial* level. *Northern Pipeline*, supra held that the availability of appellate review before an Article III Court does not cure the Constitutional defect inherent in having a non-Article III judge exercise the initial decision making authority.

Requirements of Article III are a fundamental element of the structure and constitutional role of the judiciary. Petitioner did not select an alternative to judicial resolution because litigants have no authority under the constitutional scheme to invest non-Article III officers with Article III "judicial powers." (see Finley @ pg. 596). This case "arises under" Federal Law and is within the Judicial Power Defined in Article III.[9] However, the proceedings below "— did not take place under the district court's total control and jurisdiction" see *Raddatz*, supra @ pg. 681 and there was no Article III de novo review. Constitutionally viable claims were in effect adjudicated by An Article I

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[7] "U.S. v Raddatz": Judicial Economy at the Expense of Constitutional Guarantees. BKLYN.L.R. Vol. 47:559,1981, by E. Weisfelner

[8] i.e. absent Article III control and de novo review, on a wide spread basis.

[9] Article III, Section 2 of the Constitution provides that the "judicial Power shall extend to all Cases, in Law and Equity, arising under — the laws of the United States — ".

Court. The district judge did not find independently but ruled on the magistrate's reports for he relied on "the reasons stated therein" (A-5) i.e. those of the magistrate for his ORDER. James Madison recognized that appellate review of errors of law does not alleviate the dangers of having a "dependent judge". See 1 Records of the Federal convention 124 (M. Farrand ed. 1911)

This Court said in *Chandler v Judicial Council of the Tenth Circuit*, 398U.S.74,84(1970), "There can be no disagreement among us as to the imperative need for total and absolute independence of judges in deciding cases or *in any phase* of the *decisional function*." (emphasis added).

Petitioner was denied an independent adjudicator, and the appellate affirmation without opinion was inadequate. The threats to the separation of powers and judicial integrity envisioned by the Framers of Article III flow largely from control of judges' subsestence and tenure, rather than from direct manipulation of the law, appellate review is an inadequate corrective. (Columbia Note, supra @ 592.)

THERE IS WIDESPREAD ROUTINE DELEGATION

The right of petitioner and hundreds of other pro se litigants to an Article III judge was violated. The district judge did not meaningfully review the magistrate's findings, so he did not exercise the scrutiny and authority of a judge ____he did not perform a searching enough analysis to have protected either petitioner's right or the interest of the judicial system.

This Court should take JUDICIAL NOTICE of District Court Records for the District of New Jersey, pursuant to *Shuttlesworth v Birmingham*, 394U.S.147, 157(1969). There is a pattern that petitioner has uncovered of wholesale delegation of pro se cases to magistrates without sufficient de novo review. Not only does said practice violate the Article III and due process rights of the litigants thus subjected to a second class system of justice, but it also threatens the integrity of the Article III judicial system. Widespread delegation removes authority and control from the Article III judges, and it also creates a public percep-

tion that less prestigious, less qualified, less independent officials are deciding all-important questions of rights.[10]

In the fall of 1982 petitioner learned of similarly treated pro se litigants in the District of New Jersey. From a personal study of over 300 Orders (signed by 14 judges) adopting Reports & Recommendations (filed by 5 different magistrates), over a period of 6 years, review of Court records indicates numerous questionable reference practices.[11] These 300 assignments and referrals, to magistrates, indicate a marked tendency to dispose of pro se civil rights complaints efficiently and expeditiously by widespread routine delegation which constitutes a wholesale violation of the Constitutional and Statutory claims petitioner presents to this Court.

In "The U.S. Magistrates: helping district courts with heavy caseloads" (Judicature May 1981 Vol 64/No.10), authors Puro, Goldman and Singer, present a totally different picture of magistrate usage. The assignments and referrals and handling of pro

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[10] Article III Constraints and the Expanding Civil Jurisdiction of Federal Magistrates: Yale Law Journal, Vol. 88, No.5, April 1979, by R.H. Kraakman. (Discussion of the perception — systemic integrity problems presented by wholesale delegation.)

[11] *Reference practices:*

1.) The litigants were predominately pro se civil rights complainants almost invariably dismissed by the Judges' adoption of a magistrate's Report recommending said dismissal (or other dispositive disposition against the complainant).
2.) Less than 150 of the Orders conformed with the statutorily mandated Article III de novo review required by the Magistrate's Art.
3.) More than 150 of the Orders were defective and did not indicate that the Judge granted the complainant the required Article III review (as in this case).
4.) The instant presiding magistrate filed more than half of the 300 Reports (more than the total filed by the other four magistrates).
5.) The instant presiding judge adopted over one hundred of the reports (more than any two combined judges).
6.) Together with a second judge, the presiding magistrate and judge processed via dismissal or summary judgment i.e. through dispossitive motions half of these referred pro se cases.
7.) In only one out of five Orders did the presiding judge grant de novo review — all the others were de facto pro forma rubber stamps, as this case.
8.) A small percentage of the Reports filed concerned a combination of non-pro se cases, settlements, withdrawals or trials after filing of the Report.

se cases by the Southern and Eastern Districts of New York in the Second Circuit, are apparently not as obviously questionable (if questionable at all) as in the District of New Jersey. Magistrates apparently do not function as de facto judges in the Second Circuit.

Petitioner is only one representative victim of a practice[11] that circumvents the requirements of the Magistrates Act, and challenges the integrity of the Article III court — by Article I trespassing on Article III judicial domian. The statutorilly mandated de novo determination was Congress's safeguard for Article III control over the magistrate's proceedings.

No decision of this Court has ever upheld the vesting of Article III Power in a Court lacking Article III Tenure and salary protections. Such uncontrolled and continued use of magistrates as experienced and reported herein would destroy Article III. As two Justices of this Court have recently stated, "Congress has never attempted to displace Article III courts when laws of nationwide applicability were involved, and nothing in our prior decisions suggest that it may constitutionally do so." *Raddatz*, supra @ 706, (dissenting opinion of Marshall, J., joined by Brennan, J.)

A writ of certiorari should be granted to determine whether a litigant has a constitutional right to a de novo review and an opinion by an Article III Court of a Magistrate's Recommendations.

4. ROUTINE NON-CONSENSUAL REFERALS OF PRO SE CASES TO MAGISTRATES FOR DISPOSITIONS THAT EFFECTIVELY ARE FINAL VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT AND ARTICLE III.

This case further presents an issue of public importance regarding the second class system of justice to which pro se litigants in the federal courts are subjected. The district court's

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[11] This Court said in *La Buy*, supra- that references amount to little less than an abdication of the judicial function and that the practice of making references does not commend itself and should seldom be made, and if made at all only when unusual circumstances exist. @ 352 U.S.249,258(1957)

docket was kept moving and it's administrative efficiency improved by this and similar pro se references to the magistrate. Judicial economy was had only at the expense of the pro se complainant's constitutional guarantees. Such proceedings, as petitioner experienced, lacked the competency of an Article III Court, because the judge did not maintain total control nor did the judge supervise the magistrate. Hence, by relinquishing his superior judicial qualifications to those of an Article I Court — the judge deprived petitioner of due process (absence of Article III officer) during the proceedings and then again in failing to grant a de novo review.

> This Court, in *Morrisey v Brewer*, 408U.S.471,81 (1972) said that.
>
> "Due process is flexible and calls for such procedural protections as the particular situation demands."

Resolution here involves the constitutional sufficiency of conformance to the Magistrate's Act and the entitlement to adjudication by an Article III Court.

This Court enunciated a three part balancing test for Procedural Due Process within the meaning of the 5th and 14th Amendments. Both *Mathew v Eldridge*, 424U.S. 319,332-5 (1975) and *Goldberg v Kelly* 397U.S. @ 263-71 defines the private interest affected, the risk of erroneous deprivation thru procedures used and the Government's interest. The Article I substitute, provided by the Court did not possess parallel judicial knowledge or experience of a Federal Constitutional Judge and lacking such qualities failed to satisfactorily replace the Court. As a result in this matter, petitioner was treated unfairly by the magistrate, because petitioner did not receive a liberal construction of his pleadings as required by *Haines v Kerner*, 404US519,520 (1919) for if he had been he would not have been subjected to summary judgment. Hence, petitioners private interest in adjudication has been harmed.

In *Crowell & Benson*, 285U.S.22(1932) this Court indicated that Congress can delegate fact finding to non-article III officers under the necessary and proper clause, not that the clause

permits broad delegation of Article III decision making power to non-article III tribunals.

This Court should take further Judicial Notice, pursuant to *Shuttlesworth*, supra of the Court Records for the District of New Jersey. The errors of fact in the Magistrate's Report of this case, are similarly duplicated in numerous other pro-se Reports filed by the Magistrate, i.e. — petitioner's district court dismissal by an Order adopting a Report unsupported in fact by the Record is not a singular occurrence. Therefore, the procedure used in assigning the magistrate resulted in presentation of errors of fact prejudicing the outcome unfavorably for petitioner.

As a result of the harsh treatment received from the magistrate and the inadequate control and review by the district judge, petitioner was also adversely affected in a concrete way by numerous errors of procedure and law. Some of the magistrate's questionable procedural and legal conclusions follow.

First, the magistrate ruled that the State government defendants are not suable and that they are officially immunized from injunctive action. This legal conclusion alone is of such decisional significance for this Court that it appears as the last question for certiorari and is discussed in the next, fifth reason for granting the writ.

Procedurally the magistrate failed to reschedule or permit argument on the motions submitted subsequent to and not addressed on Feb. 13, 1979. Furthermore the magistrate avoided conforming with authoritative precedent in notifying petitioner of the Rule 12(b)(6) to Rule 56 conversions.[12] The magistrate then erroneously stated that respondents moved for summary judgment (A-6). Again another improper instance was the magistrates ruling contrary to State Law on the simple requirement and right to FILE a complaint, which is specified in case state

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[12] Wright & Miller, Vol. 5, ch.4, 1366; Moore's Vol. 2A, 12.01(9) pg. 2215; 12.09 pg. 2302 — "to avoid taking a party by surprise" he is entitled to notice of conversion by the Court of F.R.C.P. 12(b)(6) to a F.R.C.P. 56 motion, i.e. motion to dismiss for failure to state a claim to a summary judgment motion.

law. These are but a few of the legal errors and conclusions based either upon a confused or totally misundertood interpretation of petitioner's allegations in his pleadings. These now coupled, with misrepresentations injected into the record by respondents, such as the denials of unauthorized appearances (A-249) further compounded a complex case. Finally, in two F.R.A.P. 28(j)[13] submissions to the Third Circuit Court of Appeals petitioner listed many Circuits and several decisions of this Court that resolved legal issues in petitioners favor. This Court should recognize that these dubious legal rulings of the magistrate are another compelling reason to remand to the district judge for a de novo determination.

The vital importance of guarding the integrity of the judiciary article of our Constitution needs no elaboration. The authors of the Constitution recognized the perils implicit in the vast powers of the federal government. Congress did not mean nor have an interest when legislating on the Magistrate's Act to do away with Article III integrity by replacement. As this Court emphasized, in *United States v Will*, 449U.S.200(1980), conformity with Article III is basic to our system of government and to our freedom. The government's interest is in maintaining Article III integrity.

This Court should grant a writ of certiorari to determine if when pro se claims arising under Article III are non-consensually referred to and processed by an Article I officer absent a judge and his safeguard de novo review ____ has due process been denied.

5. STATE OFFICIALS ARE NOT IMMUNIZED FROM LIABILITY FOR ACTING CONTRARY TO ANTI-DISCRIMINATION STATUTES BY VIRTUE OF THE ELEVENTH AMENDMENT

The Amended Complaint alleges that the state officials inflicted constitutional harm to petitioner. First by negligence and carelessness with a disregard to his rights, they FAILED to

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[13] F.R.A.P.28(j) is "Citations of Supplemental Authorities."

NOTIFY or SERVE him in two State Discrimination complaints, wherein he was one of two or three named respondents (A-228). The officials accepted unauthorized attorneys as submitting him to jurisdiction, assuming they represented petitioner (A-158 to 160). These acts (two cases) were prior to Feb. 17, 1978 and included discovery efforts (A-203). However, when petitioner learned of the action, on and after Feb. 17, 1978, the state officials acted in bad faith. They further violated their Rules of Practice and Procedure (A-247,8) in not only continuing to conceal and refusing to send NOTICES of settlements, investigations and closing of said complaints to petitioner, but they intentionally refused the ministerial duty to FILE petitioners complaint (A-205). Said FILING being mandatory by statute and case law.[14]

The magistrate's granting of blanket Eleventh Amendment Immunity was a threefold error. First it conflicted with this Court's holding in *Ex Parte Young*, 209U.S.123(1908); *Edelman v Jordan*, 415U.S.651(1974); *Quern v Jordan*, 440U.S.332(1979) and *Miliken v Bradley*, 433U.S.267,289(1977). Where this Court held it to be consistent with the Eleventh Amendment that a Federal Court could enjoin state officials to conform their future conduct to the requirements of federal law even with ancillary effect on the state treasury. Petitioner had filed suit seeking declaratory and injunctive relief pursuant to 28U.S.C.§2201 & 2202 (A-170, 236-9), and was erroneously denied same.

Second, granting a state official individual immunity conflicted with *Scheuer v Rhodes*, 416U.S.232,237(1974) which concerned personal damage awards for the consequences of a state officer's individual conduct and held that individual liability is not shielded by the Eleventh Amendment. (Records of the District of New Jersey show that the Division and State agencies are not granted immunity in instances like this.)

Third, and perhaps of first impression on these issues. Petitioner filed a private suit under Title VI, 42U.S.C.§2000d,et-

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[14] See N.J.S.A.10:5-1 et-seq. The New Jersey Law Against Discrimination @ A-2456 & Rules of Practice & Procedure A-247,8.

Also, see *Soos v Perth Amboy & N.J. Division on Civil Rights, @ A-254 and cases listed at same.*

seq. (A-167-9), claiming he was barred by the Division on Civil Rights, because of his race/religion, from being part of and enjoying certain state liberty rights (A-205,8). This was done after obtaining no response from filing for administrative Title VI relief (A-180, 181).

Justice Stevens, dissenting in *Fullilove v Klutznick*, 448U.S.448(1980) said that "Title VI unequivocally and comprehensively prohibits discrimination on the basis of race in any program or activity receiving federal financial assistance." The Division and State received such assistance. This Court in *Fitzpatrick v Bitzer*, 427U.S.445(1976) @ 453 n.9 stated —

> "(t)here is no dispute that in enacting the 1972 Amendment to Title VII to extend coverage to the States as employers, Congress exercised, its power under section 5 of the Fourteenth Amendment."

Then, in *Hutto v Finley*, 437U.S.678,702(1978) Justice Brennan concurring, interpreted *Fitzpatrick*, supra as enumerating the enforcement provisions of the 14th Amendment as a limitation on the Eleventh Amendment Immunity, *Fitzpatrick*, supra held. "Congress may in determining what is "appropriate legislation" for the purpose of enforcing the provisions of the 14th Amendment, provide for private suits against states or state officials which are constitutionally impermissible in other context." *Fitzpatrick*, @ pg. 456.

The magistrate failed to recognize that petitioners Title VI claim removed the state's official Immunity, as case law precedent shows.

This Court should grant a writ of certiorari to determine if the Eleventh Amendment provides immunity for state officials who violate their own civil rights statutes and also to determine if a private Title VI suit abrogates a state's official immunity, for state officials, through section 5 of the 14th Amendment.

Conclusion

For the foregoing reasons, petitioner requests this Court to issue its writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 80-1987

EUGENE S. NEUFELD,

Appellant

v.

BRUCE BAMBROUGH, etc., et al.

Filed Aug 4, 1982

On Appeal from the United States District Court for the District of New Jersey C.A.

No. 78-2483

Argued July 23, 1982

Before: ADAMS and HIGGINBOTHAM, Circuit Judges, and TEITELBAUM, District Judge*

JUDGEMENT ORDER

After considering the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Each side to bear its own costs.

BY THE COURT,

_____
Circuit Judge

ATTEST

_____
Sally Mrvos, Clerk

Dated: Aug. 4, 1982

_____

*Honorable Hubert I. Teitelbaum, United States District Court for the Western District of Pennsylvania, sitting by designation.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EUGENE S. NEUFELD,

Plaintiff,

v. MEMORANDUM ORDER

BRUCE BAMBROUGH, et al,

Defendants. Civil Action No. 78-2483

Filed. Feb. 28, 1980

This matter was brought before the court on the motions of the respective defendants for judgment on the pleadings or for a dismissal of the complaint for failure to state a claim upon which relief can be granted. The matter was referred to Honorable Serena Perretti, United States Magistrate, pursuant to 28 U.S.C. § 636(b)(1)(B). Judge perretti filed her Report and Recommendation on January 14, 1980. Thereafter, plaintiff Eugene S. Neufeld moved for an extension of time to file objections to Judge Perretti's Report and Recommendation. By order of February 1, 1980 this court granted the

motion, extending plaintiff's time to object from January 28, 1980 to Febraury 11, 1980.

Plaintiff filed his objections on February 11, 1980, objecting to the motions having been treated as summary judgment motions and requesting additional time to supplement his objections.

It appears from the voluminous briefs, appendices and affidavits filed by the plaintiff that Judge Perretti was more than amply justified in treating the pending motions as motions for summary judgment. Plaintiff's submissions extend far beyond even the wide-ranging allegations of his pleadings. See F.R. Civ.P. 12(b)

Considering the voluminous material submitted by plaintiff and considered by Judge Perretti, no interest would be served by further extension of time to submit additional material.

This court having reviewed the Report and Recommendation of Judge Perretti and

plaintiff's objection thereto,

IT IS, therefore, on this 27th day of February 1980

O R D E R E D -

1. The Report and Recommendation of Honorable Serena Perretti is hereby adopted as the opinion of this court.

2. For the reasons stated therein, summary judgment is hereby granted in favor of all defendants and the amended complaint of plaintiff is hereby dismissed with prejudice and without costs.

CURTIS MEANOR
U.S.D.J.

Filed Feb. 28, 1980

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EUGENE S. NEUFELD, Plaintiff, v. BRUCE BAMBROUGH, et al., Defendants.

Civil No. 78-2483
Report and Recommendation

Filed. Jan. 14, 1980

INTRODUCTION

The operative facts alleged by plaintiff are few and simple, yet they have generated a multi defendant law suit of international proportions, voluminous pleadings and an assault upon every technical aspect of the proceedings. Plaintiff lost his employment and alleges that he was the victim of racial discrimination. The various defendants have moved for summary judgment, judgment on the pleadings or dismissal for failure to state a claim. Matters outside the pleading have been presented, all motions have been treated as for summary judgment. All parties have been given reasonable

opportunity to present all material pertinent to such motion.

PLAINTIFF'S ALLEGATIONS

The verified amended complaint and affidavits, documents and brief for plaintiff in connection with this motion reveal the following factual allegations of plaintiff:

Plaintiff, a white male, was hired by defendant Norbert Steinberger to be manager of quality control at defendant Compuscan, Inc. At and before the date of hiring, January 17, 1977, he was told by defendant Seymour Naps that the job required common sense and by Steinberger that he would be reviewed for salary increase after three months. Plaintiff began his work by hiring, training and managing employees, some of whom were later recommended for, and received merit pay increases. One of the employees he hired, a black female named Lee, did not perform according to his standards. She

complained about him to Steinberger, claiming that plaintiff was harassing her and plaintiff solicited the aid of defendants Steinberger, Darrow and Bergstrom, company officials, in dealing with the situation. Steinberger instructed him that blacks, being culturally deprived, were not expected to perform at the same standard as others. Plaintiff objected to this policy as being contrary to law; and continued to insist that Lee be compelled to work at the standards which he, plaintiff, expected. Lee threatened that she would make a complaint for racial discrimination and Naps failed to conciliate the personnel problem. Plaintiff was summarily dismissed as a regular employee by Steinberger on June 17, 1977, Steinberger telling plaintiff that he would do anything to avoid a race discrimination charge. Although no longer a full time employee, plaintiff was kept on by the company in

some capacity and received his last payment from the company by means of a check designated as for "services from August 8, 1977 to September 4, 1977."

Lee, on June 30, 1977, actually filed a complaint with the New Jersey Division on Civil Rights naming Compuscan, Steinberger and plaintiff as respondents. Plaintiff was never served with the Lee complaint.1/

Another black employee, Cobb, filed a discrimination complaint on July 6, 1977 naming Compuscan and plaintiff as respondents. Again, plaintiff was not served with the complaint.2/

1/ The records of the Division show that the firm of Greenberg Margolis & Ziegler, P.A., by Marguerite M. Schaffer, filed an answer on behalf of the company. The complaint was later withdrawn. Service had been made by mailing to the employer.

2/ The records of the Division show that the Greenberg firm filed an answer for Compuscan and plaintiff. The complaint was dismissed for lack of prosecution. Service had been made by mailing to the employer.

Plaintiff claims that all of the company-connected defendants and the company's financing institutions and attorneys have unlawfully violated his constitutional rights by discriminating against him in his employment because of his protests against company discriminatory practices and firing him in retaliation for his opposition. Plaintiff contends that the acts of these defendants are contrary to Title VII of the Civil Rights Act of 1964.

Aside from the allegations relating to the alleged retaliatory firing of plaintiff for voicing objection to the company policy of unlawful discriminatory favoritism toward blacks, plaintiff's complaint continues a diatribe against his former employer and the executive staff. The allegations roam the gamut from charges of falsification of test results to nepotism to waste of special paper by an unskilled typist. Plaintiff also

charges management and lending institutions with responsibility for disastrous business losses suffered by the company to the detriment of its creditors including plaintiff when he recovers a judgment. The losses are alleged to be the result of bad business and labor practices and the general male fides of the people in charge. Allegations of this nature clearly state no claim upon which relief may be granted and will be disregarded.

Plaintiff alleges that he became aware of the Lee complaint against him on February 17, 1978. On that date he went to the Paterson office of the New Jersey Division on Civil Rights where he attempted to file a complaint alleging employment discrimination by Steinberger and Lee. Plaintiff claims that he first presented a prepared written complaint which was refused, the Division employees insisting that the complaint be made on

forms supplied. The Division employees refused to permit plaintiff to use the prepared complaint as a guide and finally refused to accept any complaint after plaintiff completed the Division's pre-interview form. Plaintiff moves to add Span, one of the employees, as an additional defendant in this matter. Her supervisor, who confirmed her refusal to accept the complaint for filing, is defendant Alston. At the same time plaintiff was refused permission to see the Lee complaint against him.

Thereafter plaintiff attempted to procure information about the Lee case from Sincaglia, Chief of the Bureau of Enforcement of the Division, and after a few communications between the two, plaintiff received a copy of the Lee complaint. Plaintiff requested advice as to the procedure for "intervention" and his request received no response from Sincaglia.

Attached to the complaint herein is a copy of a Charge of Discrimination to the EEOC dated June 13, 1978 by Neufeld Compuscan, Inc. is named as the employer who discriminated; no other person is named. The act complained of is the discharge on September 4, 1977. The EEOC complaint recites that Steinberger had told plaintiff that he was being let go because of a discrimination complaint made against the company by Lee. The EEOC dismissed the charge for lack of jurisdiction and a right to sue letter dated July 17, 1978 is said to have been received on July 20, 1978. The complaint in this court was filed on October 17, 1978, less than 90 days thereafter.

Plaintiff has thus attempted to bring the matter of alleged employment discrimination to this court for redress by the conventional means of first proceeding administratively along the path laid down in Title VII. At the same time plaintiff

seeks to redress alleged wrongs suffered at the hands of the New Jersey Division on Civil Rights and at the hands of those to whom he turned to redress the alleged wrongs. The complaint alleges that plaintiff complained about the treatment he had been accorded by the Division on Civil Rights to the office of the Public Advocate, headed by defendant Van Ness. That office declined to press the matter for him.

Plaintiff also made a complaint to the New Jersey Commission of Investigation of which defendant Rodriquez is the chairman. Correspondence with the Commission's counsel resulted in that agency declining to become involved in plaintiff's dispute with the Division on Civil Rights. Plaintiff alleges that his problems with the Division are of great public interest and the Commission's refusal to pursue the matter is arbitrary and "may be prejudiced".

Contemporaneously with these two complaints, plaintiff also addressed himself to the office of Attorney General Degnan, requesting information about the Lee case. The matter was handled by Deputy Attorney General Rodner who provided plaintiff with 26 pages of material on the Lee case. On August 25, 1978 plaintiff first learned of the Cobb complaint. Plaintiff continued to correspond with the Attorney General's office in an effort to obtain answers to a myriad of questions including a statement of the "Experience & education" of the "two young ladies I spoke to on February 17, 1978 at the Paterson Office with Mr. Alston". At the same time plaintiff posed certain "HYPOTHETICAL" questions to the Attorney General relating to the operations of the Division on Civil Rights and generally charging infractions of the law including extortion perjury and compounding a felony.

Some of plaintiff's correspondence

with the Attorney General's office was forwarded to the Division on Civil Rights and defendant Musicant, the Deputy Director, corresponded with plaintiff and in effect supported the position taken by Alston and Span in refusing to file plaintiff's complaint on February 17. Defendant Potter, the Director of the Division, also corresponded with Plaintiff. Plaintiff is dissatisfied with the reactions of the persons from whom he has sought assistance and vindication.

In general terms plaintiff complains that the state employee defendants all failed to enforce plaintiff's rights. The agents of the Division of Civil Rights are said to have violated his constitutional rights by (1) failing to entertain his complaint against his employer and (2) failing to have him served with notice of the Lee and Cobb complaints against him, and depriving him of the opportunity to refute their allegations. The other state

defendants are said to have violated plaintiff's constitutional rights by failing to take action against the Division of Civil Rights (1) for the Division's discriminatory treatment of him (refusal to accept a complaint from a white jewish male while accepting a complaint from a black female); (2) for the Division's failure to serve notice of the Lee and Cobb complaints thus depriving him of an opportunity to defend. Finally, plaintiff claims that all of the defendants acted together to maliciously interfere with plaintiff's rights in employment by discriminating against him on the ground of race and by acting together to conceal the Lee & Cobb complaints and thereby deny him an opportunity to be heard in defense. Plaintiff contends that the acts complained of are violative of his rights protected by the Fifth, Thirteenth and Fourteenth Amendments and 42 U.S.C. §

1981, 1983, 1985 and 1986.

Plaintiff's brief and appendix filed in response to defendant's motion to dismiss appears to expand his claim to an attack upon the Division of Civil Rights in general, claiming that the Division is administered in a generally discriminatory manner, tending to favor blacks and promoting the interests of blacks to the detriment of whites. To this end he moves to join the Division as a party defendant. The allegations are so conclusory as to necessitate denial of the motion to join the Division.

THE DEFENDANTS

There are 3 general classifications into which the named defendants may be grouped: (1) plaintiff's former employer, Compuscan, and persons connected with Compuscan; (2) companies or persons with whom Compuscan did business; (3) state employees or officials sued both individually and in their official capacities.

GROUP 1:

Reading the complaint with as broad an interpretation as possible regarding the Compuscan group, plaintiff appears to claim that Steinberger instructed him to treat black employees more leniently than non-blacks, and when he sought the aid of Darrow, Bergstrom and Naps they failed to correct the situation. As a result of plaintiff's objections to this unlawful company policy, he was fired in retaliation. Other Compuscan people are also named as defendants: Bambrough, president; Leonard, former president; Weiss, vice-president; Frank, vice-president/treasurer; and directors Burgin, Brody, Bailleul, Allen, Olney and Millman. Other than mentioning these defendants in the caption, the complaint makes no reference to them except to allege in conclusory terms that they discriminated against plaintiff. The complaint clearly fails to state a claim against these ten

defendants upon which relief can be granted.

The Title VII claims against Compuscan, Steinberger, Darrow, Bergstrom and Naps must fail because they were not made in a timely manner. Plaintiff's last day of employment by Compuscan was apparently September 4, 1977 according to plaintiff's last pay check. Although defendants argue that plaintiff was terminated on an earlier date, the September 4th date will be accepted for purposes of this motion. The discriminatory act about which plaintiff complains is his firing in retaliation for his objections to defendant's unconstitutional favoritism toward blacks, a Title VII violation said to fall within § 704(a). No problem of a continuing wrong is presented. Plaintiff attempted, unsuccessfully to make his claim to the New Jersey Division on Civil Rights on February 17, 1978, within the 180 day period fixed by N.J.S. 10:5-18. See 42

U.S.C. § 2000e-5(c). His claim was rejected on that date and he had 30 days within which to file his complaint with EEOC. 42 U.S.C. § 2000e-5(e).

No reason is suggested for plaintiff's failure to file any complaint with EEOC until June 13, 1978, 282 days after the discriminatory event, and 116 days after the state proceeding had been terminated by the rejection of the claim. Plaintiff claims that he was told by Steinberger at the time of the firing that the company would do anything to avoid a discrimination charge by Lee. Taking this as true, it is apparent that plaintiff was immediately aware of the reason for his being discharged. There is no assertion that Neufeld was prevented from asserting his right, nor was he prevented from filing a charge with the EEOC within the statutory 30 day period. See Hart v. J.T. Baker Chemical Company, 598 F.2d 829 (3rd Cir. 1979). Plaintiff alleges no facts

indicating any overreaching or concealment on the part of the defendants except the general allegation that they concealed from him the pendency of the Lee and Cobb complaints to the EEOC. Even assuming the truth of these allegations as to the concealment of the two EEOC complaints, there is no factual or logical connection between this alleged concealment and Neufeld's failure to act within time in making his EEOC complaint. Compare Reeb v. Economic Opportunity Atlanta, Inc., 516 F. 2d 924 (5th Cir. 1975).

Plaintiff's complaint for relief under Title VII is fatally defective for a second reason in addition to lack of timeliness. The EEOC complaint filed by plaintiff names Compuscan, Inc. as the sole party which discriminated against plaintiff. Neufeld's Title VII claim in this court against all defendants other than Compuscan is barred as well by his failure to join them in the EEOC

complaint. Mickel v. South Carolina State Employment Service, 377 F.2d 239 (4th Cir. 1967); Tuma v. American Can Company, 367 F. Supp. 1178 (D.N.J. 1973).

In the alternative, plaintiff claims that the Compuscan defendants conspired together to deprive him of his rights created by Title VII and seeks relief under 42 U.S.C. 1985(c). Deprivation "of a right created by Title VII cannot be the basis for a cause of action under § 1985(c)". Great American Federal Savings & Loan Association v. Novotny, ____ U.S. ____, 60 L.Ed.2 957, 968 (1979).

Plaintiff also seeks relief under 42 U.S.C. § 1981. This Statute is limited by its terms to instances of racial discrimination because of his race. He does not complain that he was discharged because he was white, but rather he alleges that he was discharged for objecting to what he considered to be to be racial discrimination practiced in favor of others, but

not against him. There are no allegations that plaintiff was ever himself the target of racial discrimination in employment. Since only the contract clause of § 1981 is enforceable against strictly private parties, Mahone v. Waddle, 564 F.2d 1018 (3rd Cir. 1977), any general claims that plaintiff has a right to insist upon equal protection of the laws for all persons are not remedi- able under 42 U.S. C. §1981, that is assuming plaintiff has standing at all to assert such a claim.

GROUP 2:

This is an employment discrimination case. In his outrage, plaintiff has named not only his employer as a defendant but also firms which extended credit to the employer and the attorneys who represented the employer in two discrimination cases before the State Division on Civil Rights. Leon, Weill and Mahoney, a New York law firm, Bessemer Securities Corporation, Campagnie Participations et d'Inventisse-

ment Holdings S.A. (CPIH) and United Jersey Bank, having no connection whatever to the discriminatory acts charged in the complaint, cannot be permitted to remain as defendants. There is simply no set of facts which, taken as true, states a claim upon which relief can be granted, even permitting the widest latitude in pleadings. See Rannels v. S. E. Nichols, Inc., 591 F.2d 242 (3rd Cir. 1979). Loaning money to a debtor or representing a client who may be discriminating in employment is simply not the basis of any action by the aggrieved employee and the complaint should be dismissed as to them. See Univ. Chi. L.R. 402, A Construction of Section 1985(c) in Light of Its Original Purpose (1979).

Greenberg, Margolis & Ziegler, a law firm, and their employee, Schaffer, a New Jersey attorney, came into the picture presented by plaintiff when they filed an answer on behalf of Compuscan only in a

discrimination complaint made by Lee against Compuscan, Steinberg & Neufeld. Compuscan had been served and the records of the State Division on Civil Rights show that Neufeld was not served. These defendants also filed an answer on behalf of Compuscan and Neufeld in a discrimination complaint made by Cobb against Compuscan and Neufeld. Again, Compuscan had been served and the records of the State Division on Civil Rights show that Neufeld was not served. It would appear that these defendants were without authority to act for Neufeld and did so without his knowledge or permission. However, the Cobb complaint was dismissed by the agency. There is no question that Compuscan had an unequivocal right to legal representation in the Lee and Cobb matters. Giving legal representation to a client who may be discriminating in employment is simply not the basis of a Title VII action by an aggrieved employee. A title VII claim rests

upon the existence of a present, past or future employment relationship which is totally lacking between plaintiff and the law firm.

Plaintiff's claim against these defendants goes further. He contends that they did not inform him that he had been named as a defendant in the Lee and Cobb matters and thus deprived him of his Fourteenth Amendment right to present a defense. Except for the statutory remedies provided in the various Civil Rights Acts, the law has no provision for the private redress of an alleged constitutional violation committed by a purely private person. A cause of action under 42 U.S.C. § 1983 required that the conduct complained of has occurred "under color of" state law. Jackson v. Metropolitan Edison Company, 483 F.2d 754 (3rd Cir. 1973), aff'd, 419 U.S. 345 (1974). The profession of law by private practitioners is an essentially private action.

Plaintiff does not even allege that the law firm and its members acted under color of state law. Jurisdiction based on 42 U.S.C. § 1981 does not lie: section 1981 proscribes only racial discrimination. Runyon v. McCrary, 427 U.S. 160(1976). In addition, only the contract clause of § 1981 is enforceable against strictly private persons. Mahone v. Waddle, 564 F.2d 1018 (3rd Cir. 1977). Plaintiff unsuccessfully attempts to embellish his claim with accusations of conspiracy and thus seeks this court's aid under 42 U.S. C. § 1985. The allegations of the complaint are conclusory in the extreme with respect to the facts of the alleged conspiracy and have not been supplemented in any of the voluminous materials submitted by plaintiff in connection with these motions. Complaints containing merely conclusory allegations of violation under § 1985(3) are to be rejected. Robinson v. McCorkle, 462 F.2d 111 (3rd Cir. 1972), cert.denied,

409 U.S. 1042 (1972).

If plaintiff's claim against the law firm is interpreted as alleging legal malpractice with jurisdiction based on diversity of citizenship, it must still fail. It is clear that there was no obligation to advise plaintiff of anything whatever in the Lee case in which these defendants appeared only for Compuscan and in which plaintiff was never served. While there may have been some obligation in the Cobb case since these defendants apparently mistakenly, appeared for plaintiff, the failure to discharge the obligation is of no moment. The simple undisputed facts are that these defendants did provide a defense for plaintiff in the Cobb case and the Cobb case was dismissed by the Division on Civil Rights. Summary judgment should be granted in favor of Greenberg, Margolis & Ziegler, P.A. and Schaffer and against the plaintiff.

Plaintiff asserts claims against

Steinberger, Darrow & Bergstom for alleged violations of §1981 and §1985 arising from their connection with the acts of the lending institutions and the lawyers. Since the acts of the lending institutions and the lawyers give rise to no claim upon which relief can be granted, connection with or participation in these acts by Steinberger, Darrow & Bergstom does not spell out a claim upon which relief can be granted. Summary judgment should be granted in their favor on these claims.

Independent federal jurisdiction of plaintiff's claims against all the private individuals and firms on any theory other than violation of civil rights is not shown. Plaintiff claims pendent jurisdiction. Before considering whether in the exercise of sound discretion this court ought to exercise that jurisdiction, it must first be determined whether the court

has power to entertain the asserted pendent claims.3/

Applying the twin tests of United Mine Workers v. Gibbs, 383 U.S. 717 (1966), it can be seen that the federal race discrimination claim and the charges involving these defendants do not "derive from a common nucleus of operative fact", and would not ordinarily be expected to be tried "all in one judicial proceeding" 383 U.S. at 725. There is thus no jurisdiction to entertain any claims not based upon the civil rights theory.

3/ Among the complaint's allegations in support of the asserted pendent claims are the following:

> The abuse of employed personnel, the manipulation of records, the lack of Corporate integration and the prevailing inexperience and at time malicious behavior of Defendant Managers and personnel in actions complained of, has brought the Company to a present difficult state. Equipment performance is failing and the need for great leadership is critical. This present condition is simply a consequence of selfishness and greed that caused defendants to engage in the practices stated, which are gross violations of the law.

GROUP 3:

Neufeld has made two distinct claims against the state employees and officials who are defendants in this matter. Defendants Attorney General Degnan, Public Advocate Van Ness and Rodriquez, chairman of the New Jersey State Commission on Investigation are sued both individually and in their official capacities for their alleged failure to take action against the State Division on Civil Rights as demanded by Neufeld. Plaintiff alleges that all these defendants deprived him of his right to due process and equal protection of the law and seeks a remedy under 42 U.S.C. §§ 1981, 1983 and 1985.

The complaint against all of the state defendants in their official capacities is barred by the Eleventh Amendment. "[A] suit in federal court by private parties seeking to impose a liability which must be paid from the public funds in the state treasury is

barred by the Eleventh Amendment". Quern v. Jordan, 440 U.S. 332, 337 (1979). To the same effect is Alabama v. Pugh, 438 U.S. 781 (1978) and Skehan v. Board of Trustees of Bloomsburg State College, 590 F.2d 470 (3rd Cir. 1978). The New Jersey Tort Claims Act did not impair New Jersey's Eleventh Amendment immunity. Ritchie v. Cahill, 386 F. Supp. 1207 (D.N.J. 1974). Summary judgment in favor of all of the state officials and employees sued in their official capacities should be granted. The complaint against Degnan, Van Ness,4/ and Rodriquez

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4/ As set forth in the complaint, the allegations against Van Ness are as follows:

> The decision of the Public-Advocate STANLEY C. VAN NESS to "not get involved" is discriminatory and similar situations challenging the Public-Advocates Decisions exist! These refusals after knowing the facts of the matter as revealed by Mr. Roy T. Falls in a letter dated Oct. 3, 1978 "I know you intend to pursue this though FEDERAL channels and hope it will eventually be resolved to your satisfaction -- etc." clearly indicates STANLEY C. VAN NESS knew there was jurisdic-

(footnote continued on following page)

individually is clearly without merit. All are charged with derelictions in their prosecutorial or quasi prosecutorial duties. Thus all are immunized from suit. Imbler v. Pachtman, 424 U.S. 409 (1976); Butz v. Economou, 438 U.S. 478 (1978). Officials performing functions analogous to those of a prosecutor in determining whether to initiate administrative proceedings or seek sanctions should be able to claim absolute immunity with respect to such acts. Summary judgment in favor of defendants Degnan, Van Ness and Rodriquez should be granted.

tion for Constitutional violations in stating this opinion, yet VAN NESS offered no State remedy. Hence with knowledge of and as an attorney and acting as the Public Advocate under State Laws, VAN NESS refused to prevent the continuing Civil Rights Denials to Plaintiff or exert any of his powers on and for Plaintiff. The refusal to do so is alleged to be based upon arbitrary, capricious and frivolous decision making processes, for clearly the Public Advocate knew all the issues and details from submitted documents.

It is alleged against the persons connected with the State Division on Civil Rights that they refused to accept plaintiff's complaint against Compuscan et als for filing, failed or refused to see that he was served with the complaints filed against him by Lee and Cobb and failed or refused to give him information which he requested about those two complaints. The defendants so charged are Smith, the Director of the Division, Potter, a former director, Alston, the manager of the Division's Paterson branch office, Sincaglia, chief of the Division's Bureau of Enforcement, Musicant, the Deputy Director and Rodner a Deputy Attorney General assigned to the Division. All are sued in their official capacities and as individuals.

Except for having his name mentioned in the complaint, defendant Smith is not alleged to have any connection with the events about which plaintiff complains. Sincaglia engaged in a brief corres-

pondence with plaintiff. This defendant's failure to continue the correspondence is alleged to be a violation of plaintiff's right to be informed of the Lee and Cobb complaints against him. Musicant, 5/ Rodner6/ and Potter also corresponded with plaintiff and provided him with information about the Lee and Cobb complaints or about the policy or practice of the State Division on Civil Rights. For some inexplicable reason they have been made parties to this action and their obvious efforts to provide courteous responses have been twisted into a

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5/ Musicant wrote and signed a letter dated September 27, 1978 for the director, Potter, in which she stated that the Division would not take plaintiff's complaint "because you do not state a claim under the law upon which relief can be granted..."

6/ As set forth in the complaint, the allegations against Rodner are as follows: "[Plaintiff's] letter dated July 8, 1978 to DEGNAN was 'cosmetically' answered by ROSNER for DEGNAN and the Facts of the instant matter were misrepresented, the Law is and was improperly quoted and the letter is misleading..."

reflection of an international plot against Neufeld. Their correspondence appears as part of the appendix in support of the state defendants' brief which was received by the clerk on December 12, 1978.

In § 1983 actions liability may not be premised on the common law doctrine of respondeat superior. Rizzo v. Goode, 423 U.S. 362 (1976); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077 (3rd Cir. 1976). The burden falls on plaintiff to demonstrate the requisite personal involvement. Bracey v. Grenoble, 494 f.2d 566 (3rd Cir. 1974). If plaintiff's complaint is interpretated as alleging that the directors and deputy directors of the New Jersey Division on Civil Rights are in some way liable to plaintiff for failing to adequately oversee the operations of the Division, it would still state no cognizable claim against these officials. Conclusory allegations of such a nature

which are void of the necessary element of direct involvement must fail, "since liability cannot be predicated solely upon supervisory authority". Diaz v. Ward, 437 F. Supp. 678, 689 (S.D.N.Y. 1977). Summary judgment should be granted in favor of defendants Smith, Potter, Sincaglia, Musicant and Rodner.

The remaining defendant, C.Y. Alston, is the manager of the Division's branch office in Paterson, New Jersey. Alston had some personal contact with plaintiff's case on February 17, 1978 when Spann, an intake worker at the branch, refused to accept plaintiff's complaint for alleged employment discrimination. Plaintiff went over her head to Alston who himself refused to accept for filing a complaint said by plaintiff to have been prepared by the American Jewish Congress. Instead, plaintiff was compelled to complete a form supplied by the Division. Alston refused to file plaintiff's complaint even after

plaintiff completed the prescribed form.

A copy of the purported complaint prepared by the American Jewish Congress is included in plaintiff's appendix in opposition to this motion. It is actually a skeletal outline to be used as a guide in the preparation of a complaint. Also included in the appendix is a copy of the Pre-interview Form completed by plaintiff on February 17th at the Paterson branch office.7/

It must be noted initially that Alston's action did not foreclose

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7/ According to the Pre-interview Form, plaintiff was complaining about his dismissal from employment "because of an action filed against the company by M. Lee, alleging discrimination". In response to the question, "What discriminatory act was committed?", plaintiffs response was as follows:

> I was falsely accused of discriminating, not permitted to defend or rebute allegation, I was dismissed, received no verbal or written warning of action and not permitted to transfer or perform other type of work for the company which was verbally and documented offered to black in the company.

plaintiff's right to pursue his claims by filing with the E.E.O.C. with subsequent suit in the District Court. The termination of the state proceeding "whether with a helpless shrug of the shoulders or a turning out of pockets, or with no explanation whatsoever" triggers Federal involvement. Pacific Maritime Association v. Quinn, 465 F.2d 108, 110 (9th Cir. 1972). No further activity toward exhaustion of his state remedies was required of plaintiff: a request for reconsideration of the refusal to accept his complaint was not necessary before making an EEOC complaint. Bremer v. St. Louis Southwestern Railroad Company, 310 F. Supp. 1333 (E.D. Mo. 1969). Violations of state law in the treatment of a claim by a state agency have no effect on the capacity of the E.E.O.C. to process the claim, Eldredge v. Carpenters 46 Northern California, Etc., 440 F. Supp. 506 (N.D. Cal. 1977). It is clear that Neufeld was

confronted with no obstacle to taking his case to the E.E.O.C. when, on February 17, 1978 Alston approved Spann's refusal to lodge the complaint before the State Division on Civil Rights.

A remaining question is whether Neufeld has a federally protected constitutional right to have his case processed by the State Division on Civil Rights. The concept that a state employment discrimination agency may waive its opportunity to take action on a particular grievance was approved in Love v. Pullman Co., 404 U.S. 522 (1972). According to an affidavit of James Sincaglia, the New Jersey Division on Civil Rights has adopted an interviewing system named "Intensive Intake" the objective of which is to "evaluate whether the prospective complainant stated a cognizable cause of action". No complaint will be taken which fails to meet certain stated criteria. Although no precise authority has been

discovered, it seems to be beyond argument that any investigatory agency has the authority to determine the threshold question whether a complaint states a claim. It has already been established that a state anti-discrimination agency may waive involvement entirely, Love v. Pullman Co., supra, or may terminate its activity in a particular matter without explanation. Pacific Maritime Association v. Quinn, supra. It follows that Neufeld had no absolute right to have his case processed by the State Division on Civil Rights.

In addition to claiming that the failure to file his complaint was in violation of his civil rights, plaintiff also complains that Alston failed to have him served with the Lee and Cobb complaints. It is contended that this failure is also a violation of his civil rights. This second aspect of Neufeld's complaint against Alston does not appear to rise to constitutional proportions.

The circumstances of the Lee and Cobb complaints have been dealt with previously. Although it is alleged in highly conclusory fashion that Alston conspired with the other named defendants to conceal the Lee and Cobb complaints from Neufeld, the conceded fact is that a copy of the Lee complaint was furnished to him within a short time of his request for it. It is also not contradicted that the complainants had withdrawn their complaints before Neufeld attempted to intervene. Such procedure is common place in the law, e.g., Rule 41(a) F.R. Civ. P.; N.J. Rule 4:37 .1(a).

Because of the insubstantial nature of the claims against Alston, it does not become necessary to determine whether a branch manager of the State Division on Civil Rights is entitled to the protection of either absolute or qualified immunity.

For the reasons stated, it is respectfully recommended that summary

judgment be entered in favor of all defendants and aginast plaintiff with costs.

Serena Perretti
United States Magistrate

Dated: January 11, 1980

ORIGINAL TO THE CLERK

xc: Honorable H. Curtis Meanor

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SUPREME COURT OF THE UNITED STATES

No. A-553

EUGENE S. NEUFELD,

Petitioner

v.

BRUCE BAMBROUGH, etc., et al.

COMPUSCAN INC., ET AL

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of petitioner, It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

March 13, 1983

/s/ William J. Brennan
Associate Justice of the Supreme Court of the United States

Dated this 21st

day of December, 1982

[Seal Of The Supreme Court
Of The United States]

A true copy ALEXANDER L. STEVAS

Test:

Clerk of the Supreme Court & the United States

Certified this 22nd

day of December, 1982

By

Chief Deputy

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

January 13, 1983

Mr. Eugene S. Neufeld
200 West 86th Street
Apartment 7G
New York, NY 10024

Re: Eugene S. Neufeld v. Bruce Bambrough, etc., et al. A-616

Dear Mr. Neufeld:

Your application for an order directing the United States Court of Appeals for the Third Circuit to issue an opinion has been presented to Justice Brennan, who has endorsed thereon the following:

"Denied Wm. J. Brennan, Jr.
1/11/83."

Because you did not provide a service list with the addresses of opposing counsel, I must ask that you notify them of

the disposition of this application by sending them a copy of this letter.

Very truly yours,

ALEXANDER L. STEVAS, Clerk
by
Francis J. Lorson
Chief Deputy Clerk

rjb
cc: Sally Mrvos, Esq., Clerk, U.S.Court of Appeals for the Third Circuit (Your No.80-1987)

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 80-1987

EUGENE S. NEUFELD,

Appellant

v.

BRUCE BAMBROUGH, etc., et al.

(C.A. No. 78-2483) Filed Oct. 14, 1982

SUR PETITION FOR REHEARING

EN BANC

Present: SEITZ, Chief Judge, ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER, Circuit Judges, and TEITELBAUM, District Judge.*

The petitition for rehearing filed by Appellant in the above entitle case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the

circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petitition for rehearing is denied.

By the Court,

_____
Circuit Judge

Dated:
October 14, 1982

200 West 86th Street
New York, NY 10024
February 28, 1980

Hon. H. Curtis Meanor, U.S.D.J.
United States Post Office and Court House
Newark, NJ 07101

In Ref: Neufeld vs. Bambrough et.al.
Civil-Action 78-2483

Dear Judge Meanor:

I write to inform the court; (1) the Magistrate's Report and Recommendations(s) were the first indication that I received that the pending motion(s)-(is)(are) to be treated as under Rule 56 rather than Rule 12 of F.R.Civ.P., (2) although I do not know that the Court will now treat the motion(s) as seeking summary judgment. I will to protect my rights, proceed on that assumption, and (3) accordingly, I intend to file the following papers within the next several months: Motions pursuant to F.R.Civ.P.,-15-56,26,33,34,36 or any other procedural and necessary motion.

I respectfully entreat the Court not to reach any decision until I have had an opportunity to prepare and submit the above papers. I currently have a full time job and I work alone, but I wish to assure the Court that I am doing my level best to complete the task as expeditiously as possibe. I am working to the utmost of my physical capabilities.

Respectfully,
by
E. Simon Neufeld, Plaintiff, Pro Se.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EUGENE S. NEUFELD,

Plaintiff,

v.

BRUCE BAMBROUGH, et al,

Defendants.

NOTICE OF MOTION

MOTION

OBJECTIONS (PARTIAL) TO REPORT AND RECOMMENDATION

Filed Feb. 11 1980

Civil Action No. 78-2483

Pursuant to the ORDER entered on the docket on Feb. 4, 1980 extending time to plaintiff to respond to the proposed findings and recommendations, to Feb. 11, 1980 [copy of the Clerk's entry received by plaintiff on Feb. 8, 1980], plaintiff hereby (partially) responds to the REPORT AND RECOMMENDATION as follows.

Plaintiff, OBJECTS to each and every part of the REPORT AND RECOMMENDATION*, to each and every finding of fact, to each and every recommendation and to each and every conclusion of law, on the grounds

*submitted pursuant to 28 U.S.C. ¶636(b)(1)(B) filed on Jan. 14, 1980

that the REPORT AND RECOMMENDATION disregards key facts and major points in plaintiff's papers before the Magistrate, and that plaintiff was not notified that the motions were to be treated as motions for summary judgment, and that not providing plaintiff such notice denied plaintiff "reasonable opportunity to present all material made pertinent to such a motion by Rule 56".

Plaintiff reserves the right to file a more complete and proper OBJECTION when given the opportunity and appropriate amount of time to formulate OBJECTIONS which he has heretofore not been provided and now requests since notice of said conversion of the 12(b)(6) and 12(C) to Rule 56, appeared in paragraph one of the REPORT AND RECOMMENDATION filed on Jan. 14, 1980.

"_the court at no time intimated that it intended to consider the motions under Rule 56. This statement is not contra-

dicted. Eight months later the court extended the order granting summary judgment for the appellees." Newman Oil Company v. Atlantic Richfield Comp. 597 F.2d 275@278(1979).

"_consequent right in opposing party to file counter-affidavits or to pursue reasonable discovery". Plante v. Shivar, 540 F.2d 1233. Plaintiff has not filed counter-affidavits, see Dayco Corporation v. Goodyear Tire & Rubber Co., 523 F.2d 389.

There is implicit in "reasonable opportunity" provision of Rule 12(b) a "notice requirement". Schwartz v. Commonwealth Land Title Insurance Co. (1974, D.C. Pa) 374 F.Supp 564.

Now that notice has been given in the REPORT AND RECOMMENDATION that the 12(b)(6) and 12(c) motion is treated as a Rule 56 motion, as recommended by the Magistrate, plaintiff requests the opportunity to submit relevant, pertinent

material in support of plaintiff's OBJECTIONS and opposition to the seventeen (17) pages of the REPORT AND RECOMMENDATION, setting into the record papers of admission, integrrogatories, affidavits, etc. and the specific listing of genuine issues as to material facts.

Plaintiff requests the time to prepare pro se such formulated OBJECTIONS to the seventeen page, forty one odd paragraphs REPORT AND RECOMMENDATION, based on complex and voluminous pleadings. To further obtain affidavits_etc._and plaintiff requests the court not to act on the REPORT AND RECOMMENDATION until plaintiff obtains such reasonable time for "stating material facts as to which there exists a genuine issue." (Local Rule 12F).

Plaintiff restates that the REPORT AND RECOMMENDATION is the first notice that the 12(b)(6) and 12(c) submitted motions were to be treated as summary judgment, Rule 56. Plaintiff's request is

hereby repeated, to postpone and continue the hearing, to permit affidavits to be supplemented and opposed by further affidavits _ to permit plaintiff to present explicit facts sufficient to justify beliefs as to the allegations of the complaint and to enter into the record such affidavits and the issues of facts to be established.

To provide for an offer of proof on trial_setting forth what is in the record as to facts.

"_the administration of justice is based upon a full and fair disclosure of the facts." Slagle v. U.S. 228 F.2d 673.

Request is hereby made for a de novo determination, based on the OBJECTIONS, that the court reject the REPORT AND RECOMMENDATION in whole, until modified by further evidence.

Respectfully submitted,

Eugene S. Neufeld

Dated: Feb. 10, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EUGENE S. NEUFELD,
Plaintiff, AFFIDAVIT

v.

BRUCE BAMBROUGH, et al,

COUNTY OF NY
STATE OF NEW YORK S.S.

Defendants. Civil Action No. 78-2483

EUGENE S. NEUFELD, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the plaintiff in this action and this AFFIDAVIT is of Personal Knowledge.

2. For the following reasons stated, I cannot present by affidavit facts essential to justify my opposition and OBJECTIONS to the REPORT AND RECOMMENDATION, because I require time to permit affidavits to be obtained or discovery to be had or depositions to be taken to justly present the facts, fully and of issue.

3. This is a complex case, containing voluminous pleadings, [see attached list], has been brought in good-faith, conforms to the F.R.C.P. is ripe, timely and justiciable, has had extensive exhaustion of Administrative State and Federal attempts at remedies to be set into the record.

4. Jurisdiction is sought under several constitutional, federal and state statutes in Civil Rights, including Due-Process, Equal Rights, Equal Protection, Privileges and Immunities, under the 5th, 13th, 14th, Constitutional Amendments, 42 U.S.C. ¶1981, 1983, 1985, 1986, 2000d, 2000e, et_seq (i.e., Title VI & Title VII) Executive Order 11246 & E.O. 11764, and Declatory Judgment Title 28 U.S.C. ¶2201,2, and others

specified in the Complaint Amended Complaint and enumerated in the pleadings in considerable detail.

5. The REPORT AND RECOMMENDATION did not take into account many key facts and major points, too enumerable to properly list and discuss, since the receipt of same on Saturday Feb. 19, 1980.

6. Several affidavits supplementing and opposing existing affidavits,could not be obtained in this short time.

7. Plaintiff was mislead and deceived by Steinberger, Compuscan, in being told to keep records of Lee and Cobb, and there would be a public hearing, then concealed the existence of the complaints.

8. Defendant Greenberg, Margolis & Ziegler; M. Schaefer knew that defendant Compuscan was in conflict with plaintiff.

9. The government employees violated their own published rules and procedure.

10. Certain defendants made claims which are not true.

11. Defendants violated their own corporate Directives.

12. Defendants communicated with each other to prevent plaintiff from learning of the proceedings and from personally appearing in same.

13. There are several mistaken misunderstandings in the pleadings of defendants and facts shall further reveal the credibility of plaintiff's allegations. These are essential in justifying plaintiff's opposition, and plaintiff must be given the oppotunity to state the material facts to which there exists a genuine issue.

14. Plaintiff shall respond by affidavit or as is provided in Rule 5b showing that there is a genuine issue(s) for trial, this requires time.

Eugene S. Neufeld, Pro Se

Sworn to before me this
10th day of February 1980.

SUMMARY OF PLEADINGS

1. Plaintiff's COMPLAINT ___ 23 pages.
2. Compuscan's ANSWER ___ 8 pages.
3. Plaintiff's AMENDED COMPLAINT ___ 37 pages.
4. State's 12b6 Motion to Dismiss ___30 pg. brief ___ 70 pg. Appendix, Van Ness' Statement ___2 pgs.
5. Compuscan's 12b6 Motion to Dismiss ___18 pg brief ___ 7 pg. Appendix.
6. Leonard's 12b6 Motion to Dismiss ___ 9 pg. brief., Leonard's Answer ___20 pgs.
7. United Jersey Bank's 12c Motion ___ 3 pg. brief.
8. Plaintiff's Opposition to - State's 12b6 ___ 48 pg. brief ___55 pg. Appendix.

   Compuscan's 12 b6 ___ 44 pg. brief __ 51 pg. Appendix.

   United Jersey's 12c ___ 9 pg. brief __ 21 pg. Appendix.

(**) Leonard's 12b6 ___ 24 pg. breif ___56 pg. Appendix.

9. States Sovereign Immunity Motion __ 15 pg. brief ___ 7 pg. Appendix.

10. Plaintiff's opposition to Sovereign Motion ___ 65 pg. brief ___ 56 pg. Appendix.

11. Feb. 13, 1979 Court Hearing ___ 53 pages.

12. Appendix on Color-Race-Religiion ___ 16 pages including 4 more pages of Discrimination Affidavit (**) add to etc.

13. Nine pages of affidavits ___.

14. Memorandum on 13th amendment ___ 18 pgs. - Appendix and Affidavit ___ 54 pgs, +1.

15. Report & Recommendations ___ 17 pgs.

Plaintiff's Papers	___28%	Pleadings	___
Appendices 309			
Defendant's Papers	___ 105	Pleadings	___
Appendices 84			
Courts Papers	___ 70		_____
Totals ___	457	___	393

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EUGENE S. NEUFELD,

Plaintiff,

v.

BRUCE BAMBROUGH, et al,

Defendants.

NOTICE OF MOTION

MOTION

OBJECTIONS TO RECOMMENDATIONS AND FINDINGS

Civil Action No. 78-2483

Filed. Jan. 28. 1980

PLEASE TAKE NOTICE that on Monday, January 28, 1980, at 10:00 in the forenoon, or as soon thereafter as plaintiff can be heard, the undersigned, plaintiff Eugene S. Neufeld, appearing pro se, will appear before The Honorable H. Curtis Meanor in his chambers in the Federal Building, Newark, New Jersey, and move this Court for an order extending the time within which plaintiff may file objections to the proposed findings and recommendations of The Honorable Serena Perretti, United States Magistrate, from Tuesday, January 29, 1980 to April 28, 1980. The

aforesaid proposed findings and recommendations were received by plaintiff on Saturday, January 19, 1980.

In support of the foregoing motion, plaintiff cites as reasons for the requested extension the fact that he is appearing pro se in this cause; that the motions and pleadings in this matter are both complex and voluminous and that the proposed findings and recommendations are in excess of 17 pages and, therefore, require for appropriate response considerable time in excess of the 10 days provided by statute.

In view of the time element involved in this case, plaintiff also herewith sets forth his formal objections to all of the recommendations and proposed findings filed by the United States Magistrate on January 14, 1980.

EUGENE S. NEUFELD

Dated: Jan. 26, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EUGENE S. NEUFELD,

Plaintiff, STATEMENT IN LIEU OF BRIEF

v.

BRUCE BAMBROUGH, et al,

Defendants. Civil Action No. 78-2483

Plaintiff is requesting an extension of time within which to respond to the proposed findings and recommendations of the United States Magistrate sitting in this cause. 28 U.S.C.A. §636(b) (1) (C) provides for a 10-day period of time for the filing of written objections to proposed findings and recommendations. The statute further provides for a right to a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

The complaint in this action sets forth 13 causes of action. Plaintiff is

appearing pro se in this matter and cannot respond to such a complex case within the 10 days provided by statute.

Accordingly, plaintiff seeks an extension of time within which to file formal objections to the proposed recommendations and findings.

Respectfully submitted,

Eugene S. Neufeld

Dated: Jan. 26, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HON. H. CURTISS MEANOR
HON. Serena M. PERRETTI
Civil-Action No.78-2483

EUGENE S. NEUFELD, Plaintiff

v. Filed July 31 1979

BRUCE BAMBROUGH, et al, Defendants

State of New York
County of New York AFFIDAVIT OF FACT

EUGENE S. NEUFELD, being of age under oath says:

1. I am the Plaintiff in this Action and my July 13, 1979 request for additional time being denied, I want to state the following:

2. Unfortunate personal situations prevented the submitting by July 31, 1979, certain FACTS, EVIDENCE and AFFIDAVITS I believe could have substantial influence on certain Court Decisions.

3. In the Court's Discretion if the 12(b)(6) and 12(c) Motions are construed to

be F.R.C.P.56 then several AFFIDAVITS of FACT would be necessary to support Plaintiff's Opposition.

4. Two AFFIDAVITS showing Corporate Fringe Benefits extended to August 15.

5. An AFFIDAVIT from S.Jacobi of the American Jewish Congress will further rebut C.Y.ALSTON and R.Spann's AFFIDAVIT.

6. AFFIDAVITS of CompuScan's Corporate-Systemic-Invidious discrimination on an historic and continuous basis on personal knowledge are forthe coming from a former long time employee, a former Asian employee and an American Caucasian, all supporting FACTS of "Unlawful Employment Practices" against Blacks, Women, Foreign Born and Retaliation against those who oppose same, and AFFIDAVIT of Tortuos Interference with Employment by use of Unreasonable duress concerning Falsification of Corporate Technical Records.

7. A Bibliography of Books, Essays, Articles, Research concerning the specified type of Discrimination and Verification of the Manifestation of such Discrimination in New Jersey.

8. A statistical report verifying that Plaintiff is and was not a singular victim of the Defendants' Actions.

Eugene S. Neufeld, Pro Se

July 31, 1979
Notary Public No. 31-4637460

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL NO. 78-2483

EUGENE S. NEUFELD,

Plaintiff, TRANSCRIPT OF PROCEEDINGS

vs.

BRUCE BAMBROUGH, et al,

Defendants.

- - - - - - - - - - - - - - -

Newark, New Jersey
February 13, 1979

B E F O R E: THE HONORABLE SERENA PERRETTI, U.S. MAGISTRATE

A P P E A R A N C E S:

EUGENE S. NEUFELD,
Pro Se Plaintiff,

GREENBERG, MARGOLIS & ZIEGLER
BY: MITCHELL FISHMAN, ESQ.,
For Defendants Bruce Bambrough, Norbert Steinberger, Marvin Weiss, William Burgin, Martin Brody, Michael R. Bailleul, Michael Allen, Norman Frank, Seymour Naps, Julian Olney, Jacob Millman, Carol Darrow, Barbara Bergstrom, Marguerite Schaffer, Greenberg Margolis & Ziegler, P.A., Leon Weill & Mahoney, Bessemer Securities Corp., Compagnie Participations et d'Investissements Holdings, S.A., and Compuscan.

PACHMAN, ARON, TILL & SALSBERG
BY: PETER W. TILL, ESQ.,
For the Defendant Robert Leonard.

A P P E A R A N C E S: (CONTINUED)

RICHARD J. DONOHUE, ESQ.,
BY: MARTIN L. SISSELMAN, ESQ.,
For the Defendant United Jersey Bank.

JOHN J. DEGNAN, ATTORNEY GENERAL FOR
THE STATE OF NEW JERSEY
BY: JOSEPH M. GORRELL, D.A.G.,
For the Defendants Degnan, Smith,
Potter, Alston, Rodriguez, Sincaglia,
Rodner, Musicant, and Van Ness.

LYNNE JOHNSON, CSR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
P.O. BOX 703
FRANKLIN PARK, N.J. 08823
(201) 645-2260

THE COURT: Give me your appearances, starting from Mr. Till and since I've got them that way.

MR. TILL: Peter Till, your Honor, appearing for Robert Leonard.

MR. FISHMAN: Mitchell Fishman, appearing for the Compuscan defendants. Would you like me to go over each one?

THE COURT: Name them all, would you please.

MR. FISHMAN: Bruce Bambrough, Robert Leonard, in his capacity as an employee of Compuscan and not individually. Norbert Steinberger, Marvin Weiss, William Burgin, Michael Bailleul, Michael Allen, Norman Frank, Seymour Naps, Jacob Millman, Carol Darrow, Barbara Bergstrom, Marguerite Schaffer, Greenberg Margolis & Ziegler, P.A., Leon Weill & Mahoney, Bessemer Securities Corporation, a French corporation, Compagnie Participations et

d'Investissements Holdings, S.A., and Compuscan, Inc.

THE COURT: All right.

MR. SISSELMAN: Martin L. Sisselman, your Honor, appearing for Richard J. Donohue on behalf of United Jersey Bank.

MR. GORRELL: Joseph M. Gorrell, Deputy Attorney General, on behalf of the Division of Civil Rights, John J. Degnan, Warren E. Smith, Venon M. Potter, C.Y. Alston, Joseph H. Rodriguez, James Sincaglia, Judith Rodner, Judy Musicant and also on behalf of Stanley Van Ness.

THE COURT: I'll talk to you about the Van Ness problem. And you are Mr. Neufeld.

MR. NEUFELD: Eugene S. Neufeld.

THE COURT: Now--

MR. FISHMAN: Judge, before we start, there were two defendants, Martin Brody and Julian Olney, who I don't believe have

yet been served in this case. I know that service was attempted at Compuscan, and they are--

THE COURT: Well, I have a Marshal's return of service on Brody at 1540 Broadway, New York City, a business location, Marshal's return shows service on Maryann Worell, identified as a secretary. Now, whether service on Brody by service--service on Brody by service to Maryann Worell, a secretary, is any service at all is a question that I won't get into, but at any rate, you are not representing Brody. Isn't that correct?

MR. FISHMAN: I'm not representing Brody if he has not been served, and it's my understanding that he has not.

THE COURT: Have you appeared for Brody?

MR. FISHMAN: No.

THE COURT: Your answer is not an answer for Brody?

MR. FISHMAN: Correct. At the time it was answered if it was answered on behalf of Brody, that was my error.

THE COURT: Well, we have had a little too many errors in this case, starting from the beginning about representing people who haven't answered, or haven't been served and things of that sort. So let's get it down straight and that is the first thing we are going to do here today, try to get down straight who represents who.

Let me look at your answer. Your answer was for quite a number of people who were not served, I noticed that in looking through the pleadings, including the people in France. You answered for Bambrough, Steinberger, Weiss, Burgin, Brody, Bailleul, Allen, Frank, Naps, Olney, Schaffer, Greenberg Margolis, Mil-

lman, Darrow, Bergstrom, Leon Weill, Bessemer Securities, Compagnie Participations, and Compuscan.

MR. FISHMAN: Yes, that was my error. I was told by the secretary of Compuscan that all those people had in fact been served, and that I represented every one of them. I have since found out that they were not served. The same goes for Mr. Olney, who was also no longer with Compuscan.

THE COURT: What are you doing, just dumping the people who are no longer with Compuscan and still carrying on the defense for the unserved, even foreign defendants?

MR. FISHMAN: The foreign defendants we do represent, Judge.

THE COURT: Olney was served by service in Rye, New York, at his home on his wife. But you are dumping Olney. Is that it?

MR. FISHMAN: At this point, Judge, I have no authorization.

THE COURT: He was served. Now I really fail to understand the position that your office is taking in this matter. You replied, filed an answer, submitted all these people to the jurisdiction for all intents and purposes, they have been submitted to the jurisdiction, they have on the surface waived lack of process, because they are in, they have answered. And your motion in this matter is on behalf of all of them.

Now, the return date for the motion comes and you tell me that you're dumping the people that don't work for your company anymore, and you were in error in answering for the unserved defendants, but you can't tell me whether or not Brody, for example, was served by service on a certain secretary at a business location

in New York. What am I going to do with this?

MR. FISHMAN: Judge, I don't think the word "dumping" is an accurate word.

THE COURT: Sorry.

MR. FISHMAN: We are prepared to represent everyone, and it was only my understanding that they had not been served, that led me to say that if they have in fact been served and this is the first knowledge I have that they have been served, then we are prepared to represent them and we do represent them.

THE COURT: What about the people in France, what possible service was made on them? Are you accepting them and submitting them to the jurisdiction?

MR. FISHMAN: It's my understanding that Mr. Bailleul, who I'm not sure of his name, was sent a copy, had been sent a copy of the Complaint, and he has sent

back a letter to our firm indicating that we should represent him.

THE COURT: So you represent him?

MR. FISHMAN: And his corporation.

THE COURT: And he represents?

MR. FISHMAN: CPIH.

THE COURT: All right.

He is submitting to the jurisdiction?

MR. FISHMAN: Yes, Judge.

THE COURT: And who are in question now?

MR. FISHMAN: I don't believe anybody is in question now, Judge.

THE COURT: You're going to carry it for Brody and Olney?

MR. FISHMAN: Yes.

THE COURT: Now, you did not answer for Leonard, but you brought a motion naming Leonard as one of the parties represented, and it's a Rule 12 motion, isn't it, were you intending to move for Leonard?

MR. FISHMAN: Again, Judge, that was my error, and I apologize to the Court. We are representing Mr. Leonard only in the sense that his actions are actions of Compuscan, Inc., and not in his individual capacity.

THE COURT: Well, we have a service on Leonard made in Ridgewood, on his fifteen-year-old daughter.

Now, Mr. Till --

MR. TILL: Judge, if I may--

THE COURT: Mr. Till prepared an ex parte order this morning to permit him to pick it up for Mr. Leonard because of the problem that Mr. Leonard finds himself in.

Go ahead.

MR. TILL: Your Honor, there was a subsequent service on Mr. Leonard by his attorney, that person being me.

THE COURT: Service was made on you?

MR. TILL: Yes, it was. I required--

THE COURT: The service on Leonard by his daughter was certainly efficacious service.

MR. TILL: I think so, and in fact after that service occurred and Mr. Leonard does not in fact reside with his family any longer and has not for some time, that service--

THE COURT: So it may have been efficacious.

MR. TILL: Effectively, Mr. Leonard was not walking away from this lawsuit because his name was listed and it directed me to observe all formalities in this Court, at which point I went to the Marshal's office and determined that there was an amended Complaint filed, and within five minutes, and I went and picked up that Complaint and I signed on behalf of Mr. Leonard, so that there is no question that there has been efficacious service on Mr. Leonard.

If I may just go on for one more moment: In Mr. Fishman's defense, I knew that the Greenberg, Margolis, Ziegler firm was representing all the Compuscan defendants, as they might be called in quotes. I advised them that Mr. Leonard retained me individually for various reasons, and accordingly, Mr. Fishman and I did exchange telephone calls and one final letter which has been annexed to my affidavit submitted to your Honor today.

THE COURT: Yes.

MR. TILL: Certainly we have also asked to be joined, substantively, in Mr. Fishman's brief and notice of motion for dismissal today. I, after obtaining the amended complaint, fortuitously ran into Mr. Neufeld in the hallways of this Courthouse and asked if he would accept a stipulation extending time and the answer, which I did send out to him, almost im-

mediately, but did not fall into his hands until sometime on January 25, 1979, for that I apologize to the Court and maybe I'm apologizing for the mails, but that is a problem. I understand he is a busy man anyway. And to this date, he has not signed that stipulation. Maybe he doesn't understand what the stipulation means, as counsel might understand it to mean, but certainly we have asked the Court this afternoon to accept our answer out of time, and as your Honor can see, if you would like to see the original answer we typed up, that still is waiting to be filed, there is no change to it whatsoever, so we would hope that Robert Leonard's interests are represented herein, and Pachman, Aron, Till & Salsberg will continue to represent them.

Your Honor, I'm somewhat concerned about Mr. Fishman's remarks about Com-

puscan defendants and conduct while at Compuscan. My understanding of the substantive law is there is really no protection in terms of conduct of corporate defendants, vis-a-vis their individual conduct anymore. I would like to suggest to the Court a particular case that might be helpful later on in the case. It's a very very recent case, your Honor, it was decided, the opinion was filed with the Third Circuit October 31, 1978, and the name of the case is Donsco versus Casper Corporation, and Casper Pinsker, and that was in the New Jersey Law Journal, your Honor, 102 New Jersey Law Journal, Page 493, the capsule opinion and the opinion itself, I don't think it has been published yet, but I have the slip opinion and would be glad to give it to your Honor's law clerk.

It has a disposition of corporate officers' liability and individuals, vis-a-vis their respective obligations.

THE COURT: All right. Now, what is the point that you're making?

MR. TILL: The point I'm making, your Honor, is that Mr. Leonard, as far as I'm concerned, based upon the allegations that were made in the amended Complaint, specifically Paragraphs 94, 98 and 99, totally fail to set forth any facts upon which Mr. Leonard may be responsible as a former corporate officer of Compuscan. Although there are no dates listed in the Complaint, your Honor, I think Mr. Neufeld and I could probably stipulate that Mr. Leonard left the employ of Compuscan, although remaining as a consultant. Now, I'm not sure of that fact myself, but he left the employ of Compuscan somewhere around July 1, 1977.

THE COURT: July 1st of '77?

MR. TILL: 1977. And Mr. Neufeld states, effectively, that all of the activity which he states is a violation of the Civil Rights Act occurred after that time, certainly with respect to whatever Mr. Leonard may very well be responsible for.

THE COURT: At any rate, we will get to that. That gets to the merits, the only thing I'm trying to do is find out who represents whom. I thought you were offering Donsco to clear up the matter of the representing in personal capacity and official capacity dichotomy which Mr. Fishman seemed to be getting into. You represent Mr. Leonard, period. Isn't that it?

MR. TILL: Yes, Judge.

THE COURT: Isn't that it, Mr. Fishman?

MR. FISHMAN: Yes.

THE COURT: He represents Leonard?

MR. FISHMAN: Right.

THE COURT: Your firm is not carrying any defense for Leonard.

MR. FISHMAN: No.

MR. TILL: Effectively, Judge, if there is an order entered by this Court, I think it should provide and I think I asked for that in the notice of motion, the order ought to provide there is a substitution filed with the Clerk of the United States District Court.

THE COURT: If that is necessary. I know Mr. Leonard is carried as one of the persons for whom this motion was made by the Margolis firm.

MR. TILL: Exactly.

THE COURT: I don't know if that leads to the need for a substitution, but counsel should certainly do something to

clear it up so that Leonard is very plainly represented by Till and no one else.

MR. TILL: I think our statements on the record ought to be sufficient.

THE COURT: I think so. Yes.

Now, Mr. Sisselman, you represent United Jersey for Mr. Donohue's office?

MR. SISSELMAN: That's correct.

THE COURT: Winne & Banta's office also appeared and filed an answer for United Jersey. I think Winne & Banta filed their answer two days before Mr. Donohue. Isn't that correct:

MR. SISSELMAN: Yes.

THE COURT: WHo represents Mr. Donohue?

MR. SISSELMAN: Mr. Donohue. Winne & Banta, their answer may be considered withdrawn. They were the personal counsel for the bank and Mr. Donohue is actually continuing the defendant.

THE COURT: And Winne & Banta have nothing whatsoever to do with this matter?

MR. SISSELMAN: Not at this point.

THE COURT: Except as they may be advising on a personal basis their client, the bank. Is that it?

MR. SISSELMAN: That's correct.

THE COURT: But they are not in this case now, I think that ends the private defendants. Let me see if it does. All right. All of the private defendants now are represented. We have one problem, the public defendants.

Mr. Gorrell, you say you're in this for Mr. Rodriguez and Mr. Van Ness, as well as the other public defendants?

MR. GORRELL: That's correct.

THE COURT: I have not been able to procure from the Marshals, although I was told as late as two o'clock, that I would have it sometime today, the Marshal's re-

turn of service of the amended Complaint. Neither Mr. Rodriguez nor Mr. Van Ness were named defendants in the amended complaint--in the initial Complaint. They were joined and named in the amended Complaint.

MR. GORRELL: Yes, that's correct.

THE COURT: So I don't know when they were served with their first paper. When or whether they were served with their first paper. In any event, I don't see any answer from Mr. Van Ness.

MR. GORRELL: Your Honor, there was a letter, there is no answer filed, but Mr. Van Ness joined in the motion to dismiss.

THE COURT: Yes.

MR. GORRELL: Do you have that?

THE COURT: Yes. Oh, yes.

MR. GORRELL: All right. It's my understanding of the Federal Rules that previous to filing an answer--

THE COURT: It's a Rule 12, and you can make that sort of motion prior to answer, yes.

MR. GORRELL: Yes, so my intention was to file a motion to dismiss on behalf of Mr. Van Ness and I attampted to do that, in my letter of December 19, 1978, which was addresed to Ms. Lidell, the Deputy Clerk. Do you have a copy of that?

THE COURT: No. I'm sorry, I haven't.

MR. GORRELL: I can provide that to you. Basically, what happened was that on the afternoon, I believe, of the day that we filed the notice of motion on behalf of the other defendants, our office was notified that we were to represent Mr. Van Ness as well, and we were in contact with Mr. Light, who is the--who is the law clerk to Judge Meanor.

THE COURT: I don't have the amended motion to dismiss. Not a letter to Ms.

Lidell, I have an amended motion to dismiss, 12-20 with an affidavit of service, amending your motion to include Stanley Van Ness.

MR. GORRELL: Yes, what I'm referring to, there was a cover letter sent with the motion.

THE COURT: I see. Well, that I would not know about.

MR. GORRELL: Right, and that, I had assumed would be forwarded to--well, at the time Judge Meanor was handling the case, so I imagine that I had assumed that Judge Meanor would have seen that, it would have been sent to him.

THE COURT: All right. It may be that your amended motion on behalf of Stanley Van Ness was out of time. I have no way of knowing that because I don't know when Stanley Van Ness was first served with the amended Complaint and have

no way of determining that, but at any rate, you are in the case for Stanley Van Ness.

MR. GORRELL: Yes, your Honor.

THE COURT: And there would be no question about the Court's authorizing a late appearance for these defendants. I don't know if that applies as well to Mr. Rodriguez, that is my observations about it may have been out of time. You had extensions of time for the other defendants, not for Mr. Rodriguez, but in any event, you're moving for Mr. Rodriguez, and have made this motion on behalf of all of the public defendants?

MR. GORRELL: That's correct.

THE COURT: All the public defendants, except Rodriguez and Van Ness have answered. Isn't that correct?

MR. GORRELL: No, motions to dismiss were filed on behalf of all of them.

THE COURT: I beg your pardon, extensions of time and you filed your motion instead of answers?

MR. GORRELL: Yes, in each case I filed a motion to dismiss rather than filing an answer.

THE COURT: Now, Mr. Neufeld, do you have any problems about who is represented and who is representing the defendants?

MR. NEUFELD: As long as the Court accepts the representations, unless there is a need for verification as to agencies from the foreign--

THE COURT: No, counsel says he is appearing for them, he is appearing for them.

MR. NEUFELD: Okay, because the situation that occurs now occurred a year and a half ago that caused this whole matter using my name.

THE COURT: I'm aware of that.

MR. NEUFELD: I would like to know if there would be a clarification as to the 28 USC 636 and Rule 40 of the local court.

THE COURT: What is that?

MR. NEUFELD: Concerning motions to dismiss and the authorities of the Magistrate because I think the Fifth Circuit had a ruling--

THE COURT: This is the Third Circuit and this matter has been referred to me and I don't think that you have much room to question it, but the rules and the statutes do give you your directions for objecting to the report and recommendation that will be made, and you will follow these rules and these statutes.

MR. NEUFELD: Yes.

THE COURT: I do not at any time adivse counsel or litigants as to the law, nor do I ever clarify the law for counsel or litigants. It will be up to you to do that as your study directs you.

Now, I just have two questions that I would like to ask of you, Mr. Neufeld, to assist me in clarifying the matter that I have to consider. In the papers that you filed, the exhibits in connection with your Complaint and your appendix in support of your brief in answer of this motion, would you tell me whether I'm correct that the appendix to your brief, Page 28, is the Complaint or the outline of the Complaint, which you had intended to file with the State Division of Civil Rights?

MR. NEUFELD: Yes.

THE COURT: Is that the paper that you claim to have had with you on the 17th of February, and which you were, according to your papers, not permitted to refer by Miss Spann?

MR. NEUFELD: This is a typed copy, the other one was handwritten. I have the other one.

THE COURT: But this is the contents?

MR. NEUFELD: Yes.

THE COURT: And it was this Complaint that you tried to--

MR. NEUFELD: Utilize, yes.

THE COURT: All right. Page 30 of the Complaint--of the appendix, I beg your pardon, is apparently a typed copy of the pre-interview form. The pre-interview form is attached to the Complaint?

MR. NEUFELD: Yes.

THE COURT: Is there any reason that should be brought to my attention why this Page 30, typed paper, is included? Does it in any way change the handwritten original that is part of the Complaint?

MR. NEUFELD: No, it was just for clarity, as a matter of visual convenience.

THE COURT: All right. Thank you. Another question that I had is your Page

26 of the amended Complaint, a handwritten paper concerning filing with the New Jersey Division of Civil Rights.

Would you tell me what this is, please?

MR. NEUFELD: 26 of the amended Complaint.

THE COURT: Page 26 of the amended Complaint. Could you tell me what this is?

MR. NEUFELD: Is that concerning filing with the New Jersey Division on Civil Rights?

THE COURT: Yes.

MR. NEUFELD: Oh, this is just sort of a chronological summary of what happened.

THE COURT: This is not a paper that you had attached to your EEOC Complaint, is it?

MR. NEUFELD: No, no, this is something that probably went to another federal agency as a one-page summary that I recopied indicating the sequence of events.

THE COURT: All right.

MR. NEUFELD: It's sort of a synopsis.

THE COURT: All right. It's not--it was not intended to be part of your EEOC Complaint?

MR. NEUFELD: No, no. It subsequently was submitted in tremendous communications with the EEOC trying to get administrative relief on the particular problem. This particular page, and its content was included in submissions, but it wasn't part of the initial EEOC Complaint.

THE COURT: You believe that it was later submitted to them in--

MR. NEUFELD: Oh, I did, yes, I did later submit this to them in attempting to get them to make the administrative decision to grant me the appropriate jurisdiction.

THE COURT: Who filed first, the State?

MR. GORRELL: Yes, your Honor.

THE COURT: All right. I have read the State's brief. If there are any matters that you feel you would like to expand on, this is your opportunity.

MR. GORRELL: Yes, your Honor.

THE COURT: But please remember that I have read the brief.

MR. GORRELL: Yes. There are a number of cases which I would like to bring to your attention, which are not included in the brief. And they relate to the issue of immunity, what has been termed quasi-judicial immunity and it's our

contention that in refusing, or not filing a formal complaint on behalf of Mr. Neufeld, the Division of Civil Rights was acting in its quasi-judicial capacity, and was immune to a suit under 1983. The cases I wish to bring to your attention are C.M. Clark Insurance Agency versus Maxwell, 479 F.2d, 1223. DC Circuit, 1973, in which it was held that the chief executive officers of the Department of Insurance of Pennsylvania was absolutely immune from a suit under Section 1983. Silver versus Dixon, 403 F.2d, 642, Ninth Circuit, 1968, cert denied, 394 US 990, 1969, in which it was held that Parole Board officers acting in their quasi-judicial capacity were absolutely immune from 1983 suits.

THE COURT: Now, the issues of immunity are not really contained in your brief in any detail, Mr. Gorrell, isn't that correct?

MR. GORRELL: Well, there is an immunity argument made, but it's not gone into in great detail. That's correct.

THE COURT: Well, I do think that if you intend to supplement your brief, and raise these issues, as I certainly believe they should be raised, you should submit a supplementary brief and afford to Mr. Neufeld the opportunity to respond. This does seem to be new matter, although you have touched upon it, it's certainly not part of the basis of your motion as it sits before me today.

MR. GORRELL: Yes, your Honor, I would be pleased to do that. Need I file a motion for filing a supplementary brief?

THE COURT: No, no. We certainly want all of the issues disposed of at one time. That is, the issues that would ordinarily be made in the Rule 12 motions.

MR. GORRELL: All right. I'll do that, your Honor.

THE COURT: Now,if you're just talking about the quasi-judicial immunity that may or may not be afforded to Spann and Alston, Spann is not a party defendant, I understand.

MR. GORRELL: That's correct.

THE COURT: That is one thing. If you're talking about immunity under the Eleventh Amendment, as you may be, for some of these named defendants, I would appreciate having briefs on that.

MR. GORRELL: No. I was not talking about Eleventh Amendment immunity, I was talking about quasi-judicial immunity, the 1983.

THE COURT: Then you're not using any Eleventh Amendment immunity arguments in favor of Degnan, Potter or Rodriguez, who are sued as chairmen or leaders--and Van

Ness? Have--what are they, they are cabinet members, aren't they?

MR. GORRELL: Van Ness is a cabinet memeber, yes. The Director of the Division on Civil Rights, Mr. Potter, formerly the Director, is not a cabinet member.

THE COURT: What about Mr. Van Ness?

MR. GORRELL: Mr. Van Ness is, yes. I did not mean to say that I'm not relying on that. I was just saying in citing these particular cases I was not making that argument at the time.

THE COURT: All right. Yes.

MR. GORRELL: But perhaps the wisest thing would be to submit it.

THE COURT: If you're using the Eleventh Amendment, you ought to dispose of that issue at this time. Let's put it altogether instead of ticking it off a little now and a little later.

MR. GORRELL: All right, your Honor. I would like to briefly review some of the facts in the case just to set the stage. As Mr. Neufeld indicates in his brief, he was hired in January of 1977. He supervised several employees, including an employee named Ms. Margaret Lee, who, according to Mr. Neufeld's Complaint on June 1, 1977, threatened to file a discrimination complaint against Compuscan and against Mr. Neufeld. Now, in fact, she did file a discrimination complaint on June 30, 1977. Now, sometime around this time, as far as can be told in the initial complaint, Mr. Neufeld states he was dismissed instantly when he was informed about the threat of Miss Lee's complaint and he seems to indicate it was sometime in June, although he seems to have all taken a different position later on that he was fired in August. Now--

THE COURT: And there is also a different position, at least in one place in the papers, where September 4th is taken as the date as the cutoff date.

MR. GORRELL: As far as I can tell, what happened was when he went to the Division on Civil Rights in February of 1978, as I can best piece it together, he was told he was out of time and I think he might have tried at that time to raise the September 4th date. I have a feeling that is where that enters into it, but I don't think that is very important at this time.

THE COURT: There is a factual problem, is there not? About the date of Mr. Neufeld's termination of employment with Compuscan?

MR. GORRELL: Yes, there is, there certainly is.

THE COURT: It could be sometime in June, it could be sometime in August, or

it could be September the 4th. Isn't that so?

MR. GORRELL: Yes, that's correct, and obviously we can't take care of that problem at this time.

THE COURT: No, we can't.

MR. GORRELL: In any case, Mr. Neufeld--

THE COURT: For purposes of argument, are you prepared to take one of those dates?

MR. GORRELL: I'm prepared to say that when Mr. Neufeld came to the Division on Civil Rights he indicated that he was fired on August 19th, as is indicated in his own appendix.

THE COURT: Is there anything in the complaint that he attempted to file that indicates that? Pre-interview form?

MR. GORRELL: I don't think the pre-interview form itself does. If you will give me a minute.

THE COURT: If we are going to talk about facts, we have to only talk about facts that are indisputable.

MR. GORRELL: That's correct. I don't think, very honestly, that we can say that it's an indisputable fact that he was fired on August 19th. Very frankly--

THE COURT: Do you take the position that it can be said that it's an indisputable fact that he told Miss Spann that he was fired on August 19th?

MR. GORRELL: I think it's an indisputable fact there was a calculation done when Mr. Neufeld came to the office on February 17, 1978, and the calculation by the employee of the Division was that he had filed, he had been fired one hundred--he had been fired one hundred ninety-two days prior to--prior to coming to the Division of Civil Rights, excuse me, one hundred eighty-two days.

THE COURT: All right.

MR. GORRELL: That much I can say. Whether the effective date was somewhat later, as it appears now--

THE COURT: But you really don't know where the person who made that computation got the information from?

MR. GORRELL: I can only assume, the only place the person could have gotten it from is Mr. Neufeld. Now, at the time, I think it's an indisputable face that Mr. Neufeld was told that he was out of time.

THE COURT: Yes.

MR. GORRELL: And I don't think there is any question about that.

THE COURT: I think Mr. Neufeld would agree that he was told that he was out of time. Isn't that so?

MR. NEUFELD: Yes.

MR. GORRELL: And I believe he was also told, I don't think there is a ques-

tion he was told he did not have a cause of action in this against Compuscan. Now, the question is whether--well, the plaintiff contends that because he was not served with the Cobb and the Lee Complaints in the Division on Civil Rights, that he was somehow prejudiced, and it's our position that Mr. Neufeld was erroneous in that belief. In fact, he was deprived of nothing by not having been informed of the complaints, and the interrogatories as well. There is no cause of action under the New Jersey Law against discrimination if an individual is fired because he has been charged with discrimination.

If, for example, Mr. Neufeld had filed the complaint with the Division and subsequently been fired, then of course he would have been covered, but there is no-

thing in the statute which says that if somebody is charged with discrimination and is subsequently fired, as Mr. Neufeld was alleging, that he has a cuase of action. Therefore, the fact that he wasn't informed of that, that a complaint had been filed against him, has no significance, it's immaterial, it did not affect his rights in any way. Apparently, Mr. Neufeld did not understand this.

Now, I raised the June date because Mr. Neufeld does say in his complaint that at that time, a complaint by an employee was made against him and he seems to indicate at this time in his brief that at that time he was opposing practices forbidden by the law against discrimination and that would be covered under the law against discrimination and in fact, if he had come to the Division and explained that he probably would have

been able to file a complaint, had it been in time.

My point as to his knowledge in June is that Mr. Neufeld, if in fact he was opposing practices under the act and he felt he was being discriminated against, he could have filed the complaint at that time. He did not. The fact that he was charged formally in a complaint, has no significance at all. Now, furthermore, Mr. Neufeld had a cause of action, not a cause of action, but if he was felt aggrieved by the fact that the Division on Civil Rights did not process his complaint, he had a route which he chose not to do, he could have simply filed an appeal with the Appellate Division, Superior Court in New Jersey, claiming that there was a final decision, that a complaint had been filed, or the Division had not processed his complaint and he could

have asked the Court to order the Division to file that complaint. He did not.

Now, even assuming that Mr. Neufeld could have filed a complaint in the Division on Civil Rights, that something was wrong, as I indicated before, in the--since in the sense that the Division was acting on a complaint filed by him, there was quasi-judicial immunity. The Division was making a judgment just as this Court can make a judgment that Mr. Neufeld has not filed a complaint upon which relief can be granted. In effect, what the Division was saying is, "You don't have a cause of action." And in that sense, it was acting quasi-judicially. Under 1983, no cause of action is found. Very simply, the Division in no sense refusing or not serving the complaint, in no way affected Mr. Neufeld's rights. That is serving the Lee and the Cobb complaints. Mr. Neufeld

is grasping at straws. He feels aggrieved somehow and he is trying to bootstrap his feelings into a civil rights complaint which simply doesn't exist.

Now, as to his further allegations in which he seems to claim that he was denied some right to discovery, after his attempt to file a complaint, again, in no sense was Mr. Neufeld prejudiced. He, the Cobb and the Lee complaints, as Mr. Neufeld will agree, were disposed of without any prejudice to him. He was given copies of the Cobb and Lee complaints and several other documents again. He suffered no harm by it, by Mr. Sincaglia, who wrote him letters, who spoke to him, Miss Musicant, who wrote him a letter indicating why his complaint could not be filed, a letter from Ms. Rodner who sent him certain documents. There are no facts as to--as to those individuals which can give rise to any civil rights complaint.

One further point about a brief case that was cited in Mr. Neufeld's brief. He cites Aldridge versus Terrlington, as holding that Monell versus Department of Social Services had withdrawn immunity for state officials.

THE COURT: Well, it doesn't, so pass on.

MR. GORRELL: There is a recent case, a recent reconsideration of the Court in Aldridge which I wanted to bring to your attention.

THE COURT: There is also a recent Third Circuit case on Monell.

MR. GORRELL: All right. That is all I have, your Honor.

THE COURT: All right. You filed next, Mr. Fishman.

MR. FISHMAN: Yes, first of all, Judge, we have been talking about Mr. Neufeld's appendix and Mr. Neufeld's brief, neither of which I have a copy of. So--

THE COURT: All right. Now, let's establish some ground rules. The Court rules require that all papers filed in a Court cause be served upon other counsel in the case, not their clients, just the counsel. And I know it is the clerk's rule, which was apparently overlooked in this case, not to accept for filing papers which do not have proof of service. Now, I can't explain why you did not receive your copy, I can't explain why the clerk's office received Mr. Neufeld's materials if they did not have a proof of service.

Mr. Neufeld, would you see to it that Mr. Fishman gets a copy of your brief and your appendix, please?

MR. TILL: Your Honor, I wondered if I might be joined in that request, although a proverbial late starter in this case.

THE COURT: Well, you have just come on the scene, but of course you will have to be supplied with that. What about Mr. Donohue's office?

MR. SISSELMAN: I would join in that.

THE COURT: Was Mr. Donohue's office served? Well, Mr. Donohue's office did not move until just yesterday, wasn't it?

MR. SISSELMAN: That's correct.

THE COURT: All right. So Mr. Neufeld will see to it that he gets--that you get what Mr. Neufeld has already filed, and it may very well be that Mr. Neufeld will require the opportunity to respond to your papers, since I would assume that your papers on behalf of the bank would differ quite radically from the contentions being made in support of the other defendants. Am I right?

MR. SISSELMAN: That's correct.

THE COURT: So I don't know that--you haven't had anything from the bank yet, have you, Mr. Neufeld?

MR. NEUFELD: From these two gentlemen, from Donohue and--

MR. SISSELMAN: I handed Mr. Neufeld a copy of our brief today.

THE COURT: You got it today?

MR. NEUFELD: Oh, okay, yes.

THE COURT: But you have obviously not had the chance to answer that.

MR. NEUFELD: No, I just underlined what I wanted to answer.

THE COURT: Sure.

MR. FISHMAN: Judge, at this stage I think it would be best if I just relied on the brief I have submitted, considering I obviously have not had a chance to look at Mr. Neufeld's brief and I certainly cannot respond to that and I feel all my arguments basically have been contained in

the brief and I would submit on the papers.

THE COURT: All right.

MR. GORRELL: May I clarify one thing, your Honor?

THE COURT: Surely.

MR. GORRELL: You are referring to the briefs submitted by Mr. Neufeld. Is there only one brief, the one submitted in opposition to our motion?

THE COURT: I have received only one, I have only one.

MR. GORRELL: All right.

THE COURT: Did you mean that to be a brief in response to everyone?

MR. NEUFELD: Just to the State, your Honor.

THE COURT: Then you haven't filed a brief in response to Mr. Fishman's--

MR. NEUFELD: No, no.

THE COURT: Did you want to respond to that?

MR. NEUFELD: Yes, I do, I thought it was noted in my motion of the 6th, that I would be asking that I would respond to it, yes.

THE COURT: Then you want more time to respond to him?

MR. NEUFELD: Yes.

THE COURT: To respond to Mr. Fishman's papers?

MR. NEUFELD: Yes, in a similar matter. I have all the information, it has to be put in proper form.

THE COURT: And you have had no opportunity to respond to Mr. Sisselman?

MR. NEUFELD: That's correct, yes, sir.

THE COURT: What are you going to do, Mr. Till, rely on Mr. Fishman's brief or are you going to file your own for Mr. Leonard?

MR. TILL: I had hoped I would be permitted by the Court to submit a supplemental brief and would probably, other than that, rely upon Mr. Fishman's brief as to certain substantive areas. I would identify those areas certainly for the Court that I'm relying upon. I certainly would expect or offer some response to Mr. Neufeld or some time to respond. I think rather than put the cart before the horse, I need permission from the Court to file my answer though, first, and then I would proceed with the brief, accordingly.

THE COURT: Well, as I indicated before, I would certainly permit time to respond. I can understand that on the basis of the affidavit, how this occurred between Mr. Leonard and the Margolis office and your office.

MR. TILL: Absolutely.

THE COURT: It's an error that does happen in the practice, and it's cleared up now in all events.

MR. TILL: Judge, I just wanted to address myself and I'm prepared to address myself. I mentioned the Donsco case before, and just in very brief summary with respect to Mr. Leonard, I will repeat this in my brief and succinctly, I hope. As I indicated to the Court, Mr. Leonard's name is mentioned in Paragraphs 94, 98 and 99 of the amended Complaint, specifically paragrpah 94 says, and I feel compelled to read it at this time, if I may. "In June, 1977, Robert A. Leonard resigned, but remained on as a consultant to the company. After this period, difficult times appeared." And then the paragraph continues with an economic analysis of what happened to the company after that.

Paragraph 98 and 99, set forth a standard form discrimination paragraph, one as to race and one as to discrimination with respect to national origin. Other than associating Mr. Leonard by virtue of his association or former association, I think is the better choice of words, with Compuscan, Mr. Leonard is made a party to this lawsuit individually and as a former corporate officer. Let me take the issue of individually first. The standard that is set down in the Donsco case and the law that is set forth is a very strict standard simply because the Donsco case specifically discusses issues of unfair competition. The area of trademark, patent infringement and the requisite responsibility of corporate officers to plaintiffs and in their individual capacities, and if I may read from the slip opinion, Section III of that

opinion: "A corporate officer is individually liable for the torts he personally commits, and cannot shield himself behind the corporation when he is an actual participant in the tort."

And they cite the Solo Cup case, but so as not to redact certain portions or the opinion that might be favorable to me, Judge, I would read on:

"This principle applies where the conduct constitutes unfair competition." They are obviously talking about the Solo Cup case because that case talked about unfair competition especially the heinous type of individual act by a corporate officer who was attempting to protect himself behind the corporate veil. This is the very strict standard and even I apply this strict standard to the amended complaint that has been filed here, there is no cause of action, factually, which I

believe I'm entitled to as the Rule 12 cases describe them.

There is no cause of action against Mr. Leonard here. In fact, if we go even further into the facts as Mr. Neufeld has stated in other documents he has prepared, he basically says that Mr. Leonard wasn't even there when the egregious cause of action occurred against him and that the fact that Mr. Leonard, although there has been no presentation of any proof that I have seen to date, was a consultant to Compuscan, there is absolutely no cause of action as stated.

Now, Judge, frankly I think Mr. Neufeld has done a yeoman's job in this case to date, but he has not stated any facts which would individually or as a corporate officer, establish that Mr. Leonard is in this case anywhere. If I found them, if I saw them, I would have addressed myself to

them. With respect to a corporate officer acting on behalf of a corporation, the Donsco case turns the whole theory around and, if their discussion, the Third Circuit changes their whole discussion around and says, "How about if we have a corporate officer who acts and ultimately the corporation may be responsible for his conduct as a corporate officer?" The Court goes on to say, "The fact that an officer is acting for a corporation also may make the corporation vicariously or secondarily liable under the doctrine of respondeat superior. There are no facts to even establish that study, Judge, and as I will set forth in my memo to the Court, I will argue that there is absolutely no cause of action against Mr. Leonard by way of any facts and I would object strenuously as Mr. Neufeld has had his opportunity to file an amended com-

plaint, that he be entitled to give a more specific statement of facts. He has had his opportunity. With respect to our answer, Mr. Neufeld has seen our answer. He was served with that answer by mail at his request with our stipulation extending time. He had time from that time, January 25, when he received it by certified mail, return receipt requested,to avail me of any further facts. I just can't believe that there are any other facts because he has been very diligent in submitting these papers and he hasn't submitted them to date, so that is the position I would like to take, your Honor, and I appreciate your time.

THE COURT: All right. Mr. Sisselman.

MR. SISSELMAN: Your Honor, I would submit our position on the briefs which have been submitted, unless the Court has

any area that you would like me to address.

THE COURT: I haven't had an opportunity to look through your briefs. They came to me this morning dated February 12th, so you can understand why, and as you--

MR. SISSELMAN: Yes.

THE COURT: --may or may not be aware, I have been on the bench since ten o'clock this morning until quarter after one, so I simply haven't had an opportunity to look. Did you deal with jurisdiction?

MR. SISSELMAN: No.

THE COURT: Is there any subject matter jurisdiction? Is this area of the complaint directed aginst United Jersey, United Counties, what is the name?

MR. SISSELMAN: United Jersey.

THE COURT: United Jersey, is there subject matter jurisdiction there? Is this the type of an allegation which would support pendant jurisdiction?

MR. SISSELMAN: I don't think we addressed that specifically, but our position is that there are no facts that are asserted which would lead us to believe that there is any cause of action against the United Jersey Bank. We are not involved in the Civil rights aspect of it. as affects the other defendants. There seems to be an assertion of some kind of a lien, but we know of no facts which would support that, and that is basically our position.

THE COURT: All right. Then you just take the position there is no cause for action and you don't deal with the jurisdictional issue at all.

MR. SISSLEMAN: I would say that that has not been dealt with in our memorandum.

THE COURT: All right. Mr. Neufeld, I realize that you're only prepared on the State's case, and we will have to renew this on another occasion to give you an opportunity to address yourself to the other matters, but I would like to hear you on the State's case, Mr. Neufeld, so that it won't be necessary for the State to send its attorney back.

MR. NEUFELD: Yes, well, first I would like to make some clarifications of some facts. Mr. Gorrell mentioned that the State had sent me copies of the Cobb complaint and that is incorrect. The only time I every saw it was when I received this motion to dismiss and Mr. Gorrell--

THE COURT: Excuse me. You state that the only time you have every seen the Cobb complaint--

MR. NEUFELD: In actuality--

THE COURT: --is--

MR. NEUFELD: When I received this motion to dismiss and there is an affidavit stating that.

THE COURT: All right.

MR. NEUFELD: Also he had mentioned that Sincaglia had sent me letters. Sincaglia had never written to me. Now, as far as what we are talking about, talking about facts, I would also like to clarify the letter from, in support of Mr. Van Ness, which mentions that a letter was sent to him reuqesting assistance in this matter. The fact of the matter is quite different and it's substantive. First of all, there was a total of eleven letters that went back and forth between plaintiff and the public advocate's office and five of them went from me to the public advocate's office and some of them were

significant, up to seven, eight, nine pages, describing the situation, requesting for relief under the statutory discretionary position of the public defender. In addition, the initial contact was by a visit to Trenton, or I went down to Trenton to speak to Mr. Falls. The understanding of the situation was quite clear from the initial letter written by Mr. Falls to defendant C.Y. Alston. The letter wasn't answered for a few weeks, and another letter, I understand, was sent from the public advocate. I never did receive a copy, though, concerning the situation. So a considerable amount of factual information was presented to the public advocate, substantially more than indicated by just one letter.

Now, the Court has read in detail everything, I don't know what to add, but just add a little support to my written

arguments, and actually, if it's noted, I don't think that is necessary.

THE COURT: Well, this is your opportunity to present your case, if you choose to rest on the basis of your brief, as some counsel here have done, that is perfectly understandable.

MR. NEUFELD: I'm ready to speak if I have the--

THE COURT: But don't feel that you have to. It's just an opportunity that is afforded.

MR. NEUFELD: I'm prepared to oppose the motion. May it please the Court, my name is Eugene Neufeld and I'm the plaintiff in this action appearing pro se. I will restate the basic facts of the case. That on June 30, 1977, Margaret Lee filed a discrimination complaint alleging color race discrimination naming Compuscan, Steinberger and Neufeld with the

State of New Jersey. On the same date she filed a similar complaint with the Equal Employment Opportunity Commission in Newark, naming Lee and Compuscan. A week later on July 7, Darryl Cobb, sitting adjacent to Margaret Lee, filed a complaint with the New Jersey Division of Civil Rights, naming Compuscan, and Neufeld, Page 4950 (A) of the State's answer. On the same day, Mr. Cobb also filed a complaint with the Equal Employment Opportunity Commission naming Compuscan and Neufeld's name appearing on the front of the--

THE COURT: Well, I want to reiterate, Mr. Neufeld, while this is your opportunity to address me, I assure you I have read the papers.

MR. NEUFELD: Then the only two things I would like to support is the estoppel argument and the Reeb case argu-

ment. A statute of limitations is not an absolute bar to a Court action since a potential defendant, by his conduct, may waive the statute of the limitations and be estopped from invoking it. In Gluss versus Blinn, Eastern District Terminal that is mentioned in the case I submit to the Court that an analogy of this particular case with the State agency, with actions and behavior of the defendants, with the fact that I rebutted in Steven Jacoby from the American Jewish Congress, rebutted the affidavits of Alston and Spann as what specifically happened that day, I claim that I was misled and lulled into a false sense of security by not being made aware of the situation, and I would just like--

THE COURT: Which situation were you lulled into security about?

MR. NEUFELD: I had only known of the threats of the actions against myself and the company. The day that the--the last day that I was at the company on August 19, the last day I was physically there, I had telephoned the EEOC and the Division, told them the story and requested, "Is there any pending actions?"

THE COURT: Was that in June or in August or September?

MR. NEUFELD: Friday, August 19. I had requested if there were any pending actions against the company, and I was told no.

THE COURT: You were told no by someone at the Division of Civil Rights?

MR. NEUFELD: That's right and the Equal Employment Opportunity Commission.

THE COURT: Both?

MR. NEUFELD: Yes, both. Subsequently, on Page 21(A) the--of my com-

plaint, I telephoned and I have telephone receipts that I spoke with Paterson and Newark again, for several minutes, asking if any pending complaints existed upon which I could base a claim. I was again told nothing existed, when in fact, on both dates two complaints existed naming me as a respondent. In addition, on February 17th, while at the American Jewish Congress, and defendant Alston was speaking with Steven Jacoby, the attorney there, he was only told of the Lee case that I was named in, while attempted, in a docket and it must be physically closed,if they file them by company, I was named in the Cobb case. I did not learn of being named in the Cobb case until August 25, as a result of the Freedom of Information Act from the Federal Government, I reviewed the sanitized files at the Equal Employment Opportunity Commission and from

the handwriting, because names were obliterated and removed, and from the content, I surmise 99.9 percent that was Cobb. I never saw anything from the Cobb complaint with Cobb's name on it until I received this motion. So I would just like to quote from the Gluss versus Blinn Eastern-- "Where one party has by his representations or conduct, induced the other party to a transaction to give him an advantage, which it would be against equity and good conscience for him to assert, he will not in a court of justice be permitted to avail himself of that advantage, and such doctrine is applied by courts of law as well as equity where a technical advantage obtained to set up and relied on to defeat ends of justice or establish dishonest claims."

I submit to the Court that they apply this in the case where I attempted through

telephone calls to determine if I had anything more substantial than a threat.

THE COURT: All right. Now, may I understand you. The complaint which you sought to lodge with the State Division on Civil Rights had to do with the failure of the Compuscan people and others, perhaps, to let you know about the pendency of the Lee and Cobb Complaints. Is that correct?

MR. NEUFELD: Well, there were continuing, it wasn't a singular action, I mean there is a whole docket of memos within the company that I was directed to keep the first week in April. There is a whole file of personnel situations.

THE COURT: No, I asked you a very specific question. I want to know whether you went to the State Division of Civil Rights in February of last year to complain to them about your not having been told of the pending Lee and Cobb complaints.

MR. NEUFELD: Oh, no. I went to them to file my own complaint or to learn what I could do, which I understand now would have been intervention to become part of it, not to complain that I just did not receive it. This was something that was obvious, and to be quite frank, I would have thought that upon learning it, they would have adjudicated it, they would have given me everything and said, "Well, maybe we have to backtrack and correct this error," but this stance was never taken.

THE COURT: And you were not complaining that they had not let you know. Is that it? You were not complaining that they had not let you know?

MR. NEUFELD: No, no, I was surprised and disappointed, and then I started to inquire and I still am quite surprised that when they found out that an error administratively like this existed on two

instances, and may be occurring daily, that a proper direction to guarantee people are served, had not been instituted. They seemed to have thought--

THE COURT: Do you take the position, Mr. Neufeld, that just because you're named in a complaint, which you were never served with, some sort of liability attaches?

MR. NEUFELD: I think in this specific instance, where it resulted in what I allege to be rights, privileges and immunities and I lost property, I do. I think that it did harm me. Had I been knowledgeable of it, I would have been protected by two paragraphs in the New Jersey State Law of being part of an action that you cannot be dismissed from being part of the action. I was told by Compuscan, it will appear in the pleadings to Compuscan, to keep a file, that there

would be a public hearing that we were going to, the company would be backing and take the case to Court. The answers to the State indicated that the two claimants had no real cause of action.

THE COURT: But you claim that even though you were not served with these complaints, somehow or another, liability attached to you.

MR. NEUFELD: Afterwards, if I was not served, I would normally have assumed that the Division would automatically have done something about it, yes. The thing that I sought for several months was jurisdiction for Title 7, by equitable relief, as far as filing, that the burden of proof for me in Court would not be this tremendous research that interpretations of estoppel or other things or Reeb would have been normally taken upon automatically.

THE COURT: This all has to do with your not knowing about the Cobb and the Lee cases. Is that it?

MR. NEUFELD: Well, not quite, because when I appeared at the Paterson office, I think I explained it in my affidavit, the facts were quite different and what defendant Alston and defendant Spann say. I feel that there is preferential treatment, which in this instance was discriminatory as far as permitting access to the laws of discrimination.

THE COURT: Sorry to have interrupted you.

MR. NEUFELD: Under the general rules of equitable doctrines, once a defendant has shown that a claim is time barred by applicable statute of limitations, it is incumbent upon plaintiff, if he is to avoid bar to come forward and demonstrate

that for some reason statute should not be tolled in the case. The most applicable is Reeb versus Economic Opportunity of Atlanta, and I would just like to repeat, paraphrasing the days differently from ninety to one-eighty. That in the instant matter that I submit to the Court to hold that the one hundred eighty day period did not begin to run until Friday, February 17, 1978, when the facts that would support a charge of retaliation, reprisal, reverse discrimination for opposing unlawful employment practices, become known at the American Jewish Congress, and plaintiff went immediately to Paterson to file, and was refused filing, but in effect, did institute proceedings with the State agency having the authority to grant such relief from said unlawful employment practices and did in effect, constructively file. I would just like to

add in summary that, I think I'm--my allegations, in essence, is that the administration, interpretation and the enforcement of the laws of discrimination, either by the Division of Civil Rights and named defendants, has the consequences of being discriminatory and that in the instant matter they did violate Fifth, Thirteenth and Fourteenth Amendments, federally constitutional guaranteed rights by their specific behavior as alleged in the complaint.

MR. GORRELL: May I be heard, your Honor?

THE COURT: If you wish.

MR. GORRELL: Just a few things. Mr. Neufeld indicated to you that he had called the Division on Civil Rights in August of 1977, and alleges that he made some other phone calls. Nothing of that is in his complaint. There is no mention of

phone calls until after the February 17, 1978 statement.

MR. NEUFELD: All right. May I--

MR. GORRELL: Before that time, as far as I can tell, there is nothing in the complaint referring to any phone calls to the Division on Civil Rights.

Now, furthermore, Mr. Neufeld indicated in response to your question that when he went to the Division on Civil Rights, he wanted to become part of the complaint, he wanted to intervene, as such. At that point, assuming that he wanted to intervene, all right, if the Division on Civil Rights said to him, no, you can't intervene, he was caused no injury from that. It was those complaints that were filed against him were dismissed.

THE COURT: That is something that hasn't been established, Mr. Gorrell. It

may be that you are in, you are able to gain access to the documents which would establish the dates on which those two cases, Lee and Cobb, were closed, but there is nothing in the appendix that has the exhibits attached to any of these papers that establishes those dates. Reference is made and the argument in your brief, but I don't see any papers which show me those dates. If they are in here, you should call them to my attention at once.

MR. GORRELL: Rather than take up your time at this point--

THE COURT: I do think that if there are those documents, they should be furnished to me.

MR. GORRELL: I will send them to you.

THE COURT: Because it very well may be that the dates of termination of the

Lee and Cobb case might be quite important. These should be matters of record.

MR. GORRELL: I will represent to you that at least one of them if not both, I have to check, did occur afterwards, after Mr. Neufeld came to the Division on Civil Rights, as far as a dismissal is concerned. But I don't think that makes any difference, whether they were dismissed before or after the time of the complaint is immaterial. Mr. Neufeld suffered no prejudice, no harm from not having gained access to the complaint.

THE COURT: Well, that may be another argument.

MR. GORRELL: That is the primary argument we want to make.

THE COURT: That is quite different than saying, well, he couldn't intervene because the cases had already been dismissed before he showed up.

MR. GORRELL: No, I wasn't--

THE COURT: That is what you said when you started out.

MR. GORRELL: I'm sorry, I didn't mean to make that argument. I did mean to argue that--

THE COURT: Even if they were there and he wasn't told, since he wasn't hurt, it makes no difference. Is that your argument?

MR. GORRELL: That's correct, that's correct. I will represent to you at this time that the complaints were in the process of being dismissed.

THE COURT: In February?

MR. GORRELL: Yes, February of '78.

THE COURT: There is some reference in some of the papers to a December date for the Cobb case, but it doesn't say in just so many words that the case was dismissed. It just sort of wants me to draw the impression that it was, but I did not.

MR. GORRELL: In my supplementary brief, I will provide those papers to you.

THE COURT: It could be helpful, it may have no meaning whatsoever to this case.

MR. GORRELL: In any case, I will provide them to you.

THE COURT: All right. If you would.

MR. NEUFELD: I would like to clarify some facts. On Page 21 (a) of the State's answer in this motion is a copy of telephone bills which indicate three telephone calls made, one on September 28th to the Newark, New Jersey office of Civil Rights at 1:16 p.m. for two minutes. Another one made on September 28th at 1:18 p.m., six minutes to Newark, and then subsequently another one at 1:34 p.m., eight minutes to Paterson. These two minutes, six minutes and eight minutes were attempts to determine if anything was pending naming the company Compuscan or involving myself.

THE COURT: All right. Thank you all. Let's make a time table, please, for the responses in it. In the ordinary course of things, there would be twenty days lead time, and answering briefs would be due in ten days before. Isn't that it?

MR. TILL: Yes.

THE COURT: I would like your responses, Mr. Neufeld, in ten days. I shouldn't say your responses, your answer, your answer to Mr. Till's brief, it will be ten days--oh, Mr. Till, when are you going to do it?

MR. TILL: Would you like me to have it filed with the Court within ten days?

THE COURT: I would say so.

MR. TILL: Fine, Judge.

THE COURT: And then yours is due ten days after that.

Now, Mr. Fishman, you have not received Mr. Neufeld's brief in response to yours.

MR. FISHMAN: I don't think that brief was in response to mine, Judge.

THE COURT: It was not. That is true, it was not. Are you going to submit any papers in response to Mr. Fishman's--

MR. NEUFELD: Yes, yes.

THE COURT: You will have to do that within ten days from today, Mr. Neufeld. How long have you had Mr. Fishman's brief?

MR. NEUFELD: I have to look at the date.

MR. FISHMAN: It was filed with the Court on January 3rd.

MR. NEUFELD: I think I got it the 5th.

THE COURT: That has been ample time. If you had chosen to, you could have well within the tolerances of the rules, but another ten days. Take two weeks.

MR. NEUFELD: Thank you.

THE COURT: And you received Mr. Sisselman's brief for the bank today. Two weeks for that as well. I don't believe there will be any purpose in having any further argument on this.

MR. GORRELL: Your Honor, is there a particular amount of time you want my supplementary brief by?

THE COURT: Promptly.

MR. GORRELL: Will ten days be sufficient?

THE COURT: That is fine.

MR. GORRELL: All right. May I just clarify one other point. You had mentioned--I had not received a sheet relating to the service by the marshal.

THE COURT: Yes.

MR. GORRELL: I have obtained a copy of it a while back.

THE COURT: Of the amended Complaint? Or the Complaint?

MR. GORRELL: No, well, it's a sheet.

THE COURT: It's the docket sheet.

MR. GORRELL: Yes. Perhaps I should show it to you.

THE COURT: It's our docket sheet. Does it show a lot of services made on October 26?

MR. GORRELL: It shows nothing on October 26.

THE COURT: Let me see what it is you are referring to.

MR. TILL: Judge, I hate to bring this point up, may I submit an order to the Court permitting my filing of Mr. Leonard's answer--

THE COURT: Please do that.

MR. GORRELL: It appears from the docket sheet that the amended complaint was issued to Mr. Degnan and Mr. Van Ness on the 15th of September--

THE COURT: The summons was issued, that is not what I mean. I'm talking about when it was served. I don't care when it was issued.

MR. GORRELL: All right. As far as I can tell--I'm sorry.

THE COURT: I know that you don't know because I don't know and the clerk doesn't know.

MR. GORRELL: All right. I'm sorry.

THE COURT: And they promised me at two o'clock I would know before the end of the day before I thought it might be important to resolve the issue, but we resolved it without it and we will never know. Anyway, everybody is represented and that is better than erverybody being served.

I will have your papers as we discussed. Thank you.

Filed Feb 6 1979

AFFIDAVIT

Stephen M. Jacoby, being duly sworn, deposes and says:

1. I was at all times covered by this affidavit Staff Counsel to the Commission on Law, Social Action and Urban Affairs of the American Jewish Congress and my area of responsibility included matters of alleged discrimination in employment on the basis of race or religion.

2. I make this affidavit in response to the request of Eugene Neufeld who came to my office on February 17, 1978 to discuss an allegation of "reverse discrimination," to wit, that his New Jersey employer had fired him, without a hearing or chance to refute any charges, because a Black female employee in his department named Lee had filed a complaint of racial discrimination against the employer.

3. Mr. Neufeld, who was particularly anxious to know what he might have been charged with, described to me unsuccessful attempts to obtain from the New Jersey Civil Rights Division specific information about said complaint or a copy thereof.

4. In a telephone conversation on February 17, 1978 a male official of the Paterson office of New Jersey Civil Rights Division (I have no record of his name) gave me the case number of the Lee complaint and advised me that Neufeld was a named respondent but had never been served.

5. When, in the same conversation, I expressed surprise that Neufeld had not been served or notified of the complaint against both his employer and him, this same official made a statement to the effect that it was a common practice for the Division to serve only the employer-respondent on the assumption that it would

represent the employee-respondent and itself.

6. In the same conversation, I asked how Neufeld might intervene in the Lee complaint or otherwise defend himself against the charges in it or file a new "reverse discrimination" complaint.

(a) With respect to the Lee case, the official said it was too late for Neufeld to do anything as Lee had already asked the Division to withdraw the complaint due to settlement, and, although the Division had not yet done anything to close the case, the Division was powerless to keep it open to allow Neufeld time to see the complaint and respond.

(b) With respect to a new complaint, the official expressed reservations about the subject matter jurisdiction of the Dvision, but said that, if Neufeld wanted to try this route, he would have to appear at the Division office personally to file the complaint.

7. At no time in this same conversation did the official indicate that jurisdictional or other defects which might be grounds for dismissing a complaint would be grounds for Division refusal to physically receive a written complaint for its consideration.

8. Immediately at the end of the conversation, I conveyed all the information I had received to Neufeld who was still in my office.

9. Neufeld mentioned to me, at the time, ony the Lee case; he said nothing to indicate he knew of the existence of any related complaint, and, as a result, I asked the Paterson official only about a case brought by a Black woman named Lee. That official volunteered information about no other related case.

10. All information about subsequent events, including Neufeld's rejected attempt to physically file a "reverse discrimination" complaint, was supplied to me solely by Neufeld and I have no direct knowledge of it.

Stephen M. Jacoby

Oct. 30, 1978 Notorized

THE AMENDED COMPLAINT (FOLLOWING HEREIN) REFERENCES CERTAIN DOCUMENTS WHICH HAVE NOT BEEN REPRODUCED. THESE REFERENCES APPEAR IN BLANK PARENTHESES; AND SHOULD THE PETITION FOR CERTIORARI BE GRANTED ALL APPROPRIATE DOCUMENTS WILL BE REPRODUCED FOR THE CONVENIENCE OF THE COURT.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HON.H.CURTIS MEANOR
CIVIL-ACTION No.78-2483

(Verified) AMENDED COMPLAINT

(Civil-Rights) AND JURY DEMAND

EUGENE S. NEUFELD, Plaintiff

vs.

ORIGINAL FILED
Nov. 14, 1978

BRUCE BAMBROUGH --- President, CompuScan, Incorporated;

WARREN E. SMITH --- Director, New Jersey Division on Civil Rights;

JOHN J. DEGNAN --- individually and as Attorney General, New Jersey;

ROBERT A. LEONARD ---individually and as former President of CompuScan;

VERNON N. POTTER --- individually and as former Director, New Jersey Division on Civil-Rights; STANLEY C. VAN NESS --- individually and as the Public Advocate of New Jersey; NORBERT STEINBERGER --- individually and as Executive Vice President of CompuScan; C.Y.ALSTON ---

individually and as Branch Manager, Paterson Office, New Jersey Divsiion on Civil-Rights; JOSEPH H. RODRIGUEZ --- as Chairman, Commission of Investigation, State of New Jersey; MARVIN WEISS --- individually and as Vice President, CompuScan; JAMES SINCAGLIA --- individually and as Chief, Bureau of Enforcement, New Jersey Division on Civil-Rights; WILLIAM T. BURGIN --- individually and as Director, CompuScan; JUDITH E. RODNER --- individually and as Deputy Attorney General for Civil-Rights, New Jersey; MARTIN BRODY --- individually and as Director, CompuScan; JUDITH S. MUSICANT --- individually and as Deputy Director, New Jersey Division on Civil-Rights; MICHEL R. BAILLEUI --- as Director, CompuScan; MICHAEL L. ALLEN --- as Director CompuScan; NORMAN FRANK --- individually and as Vice President-Finance and Treasurer, CompuScan; SEYMOUR NAPS --- individually and as Vice

President, CompuScan; *JULIAN F. OLNEY --- Director of CompuScan. The 1977 Annual Report shows Mr. Olney as a Director as in the past years; JACOB MILLMAN --- Director of CompuScan; CAROL M. DARROW --- individually and as Corporate Secretary of CompuScan; BARBARA BERGSTROM --- individually and as Personnel Manager of CompuScan; MARGUERITE M. SCHAFFER --- individually and as Attorney for CompuScan; Greenberg, Margolis and Ziegler; Leon, Weill and Mahoney; Bessemer Securities Corporation; Compagnie Participations et d'Investissements Holdings S.A.(CPIH); CompuScan Incorporated; Chase Manhattan Bank (N.A.) and United Jersey Bank.

Defendants

INTRODUCTION

1. This is an action instituted by the Plaintiff, EUGENE S. NEUFELD, against BRUCE BAMBROUGH, President of CompuScan Incorporated; WARREN E. SMITH, Director,

New Jersey Division on Civil-Rights; JOHN J. DEGNAN -- Attorney General of New Jersey, and others charging them with wrongful discharge, termination and dismissal in retaliation for opposing unlawful employment practices; for disparate employment treatment; for deprivation of and neglect to prevent deprivation of and for conspiracy to deny Plaintiff, Due Process, Equal Rights and Equal Protection Under the Law. Said actions on their parts violates the Plaintiff's Rights as guaranteed by the Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution and the Civil-Rights Acts of 1866, 1871 and 1964 (as amended) see Title 42 U.S.C. Sections 1981, 1983, 1985, 1986 and Title 42 U.S.C. Section 20000e-5 et- sequens (as amended) which is Title VII. Equitable and other relief are also sought under 42 U.S.C. 2000e-5Q; and E.O.11246; for Title VI (42

(U.S.C. 2000d) E.O.11764; Pendent State claims are also sought per statutes.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to Title 28.U.S.C. Section 1343(3) and (4), this being an action seeking redress for violation of Plaintiff's Rights as guaranteed by the FIFTH, THIRTEENTH and FOURTEENTH Amendments to the United States Constitution and the Civil-Rights Acts of 1866, 1871 and 1964 (as amended): Title 42 U.S.C. Sections 1981, 1983, 1985, 1986 and Title 42 U.S.C. Section 2000e et.sequens (as amended) Title VII; providing for the Equal Rights of persons in every State and Territory within the Jurisdiction of the United States, also Due Process of Law and Equal-Protection and Deprivation of Rights under Color of State Law, Conspiracy to interfere with Civil-Rights and Neglect to prevent Conspiracy to

interfere with Civil-Rights and termination in retaliation for opposing unlawful employment practices and for disparate employment treatment-benefits. Title VI, Public Law 88-352, Sec.607, 42 U.S.C.-2000d and Executive Order 11764 - Enforcement Coordination of Title VI prohibiting discrimination on the ground of color-race or national origin in programs and activities receiving Federal financial assistance. Executive Order 11246 on Nondiscrimination Under Federal Contracts, Part II, Subpart B, Sec.202(1) "not discriminate against and employee because of race, color, relilgion, sex or national origin. Jurisdiction under Title 28 U.S.C. Section 1343 (3) and (4) is invoked in conjunction with the foregoing Constitutional and Civil-Rights Enactments. Jurisdiction is also invoked pursuant to Title 28 U.S.C. Section 1337, this matter raising issues related to Constitutional

Guarantees and being in excess of ten thousand dollars (exclusive of interest and costs). Jurisdiction is also invoked pursuant to Title 28 U.S.C. 1332 this being an Action with Diversity of Citizenship, State and Foreign. Jurisdiction is invoked Pursuant to Title 28 U.S.C. Section 2284 for the purpose of hearing and determining this cause. Plaintiff seeks Declatory Relief as well as equitable relief and in that regard involkes Jurisdiction in conjunction with the Declatory Judgment Act, Title 28 U.S.C. 2201 and 2202. Pendent Jurisdiction is sought under the Uniform Commercial Code Article 9. Pendent Jurisdiction is invoked pursuant to the Governor's Code of Fair Practices, Executive Order No.21, 6-24-65 Article IV, State Facilities and Services, and in the New Jersey Law Against Discrimination (Title 10.5 et seq. N.J.S.A.). Jurisdiction is invoked for any misrepresentations, false

oaths, false swearings, concealment of misdemeanors and misrepresentations of fact. Finally, Jurisdiction of individual tort claims is invoked pursuant to the Pendent Jurisdiction of this Court; and Right to Know Laws, Title 47:1A N.J.S.A. and "breach of contract" 2A 14-1 N.J.S.A.

3. These unlawful employment practices, State Statute violations, and Constitutional Violations, were and are being committed in the District of the State of New Jersey.

4. Plaintiff, EUGENE S. NEUFELD, is a caucasian male citizen of the United States, aged 47, of the Jewish faith and divorced.

5. Defendant, BRUCE BAMBROUGH, is a Director, Chairman of the Board, President and Chief Executive Officer and Chairman of the Executive Committee of CompuScan, Incorporated.

6. WARREN E. SMITH, is the Director of the New Jersey Division on Civil-Rights.

7. Defendant, JOHN J. DEGNAN (individually) is the Attorney General of New Jersey.

8. Defendant, ROBERT A. LEONARD (individually) is the former Chairman and President of CompuScan, and is now a Consultant to CompuScan, Incorporated.

9. Defendant, VERNON N. POTTER (individually), is the former Director of the New Jersey Division on Civil-Rights.

10. Defendant, STANLEY C. VAN NESS (individually), is the Public Advocate, for the State of New Jersey.

11. Defendant, NORBERT STEINBERGER, is the Executive Vice President, a Director, a Member of the Executive Committee and the Salary Review Committee of CompuScan, Incorporated (individually).

12. Defendant, C.Y. ALSTON (individually, is the Branch Manager,

Paterson Office of the New Jersey Division on Civil-Rights.

13. Defendant, JOSEPH H. RODRIGUEZ, is the Chairman of the New Jersey State Commission of Investigation.

14. Defendant, MARVIN WEISS, is a Director, Senior Vice President, Member of the Executive Committee and Salary Review Committee of CompuScan Incorporated (individually).

15. Defendant, JAMES SINCAGLIA, (individually), is Chief, Bureau of Enforcement, New Jersey Division on Civil-Rights.

16. Defendant, WILLIAM T. BURGIN, (individually), (is the Vice President of Bessemer Securities Corporation) and Director and a Member of the Executive Committee of CompuScan Incorporated.

17. Defendant, JUDITH E. RODNER, (individually), is a Deputy Attorney General for Civil-Rights of the State of

New Jersey.

18. Defendant, MARTIN BRODY, (individually), (is the Chairman of the Board of Restaurant Associates Industries Inc.) a Director and a Member of the Executive Committee of CompuScan Incorporated.

19. Defendant, JUDITH S. MUSICANT, (individually), is the Deputy Director of the New Jersey Division on Civil Rights.

20. Defendant, MICHEL R. BAILLEUL (is the President of Aquitaine Systems, a Company of Elf-AQUITAINE) a Director of CompuScan. Mr. Bailleul is believed to be a French National.

21. Defendant, MICHAEL L. ALLEN (is a Parnter of the Law Firm of Simon and Allen) is a Director of CompuScan Incorporated.

22. Defendant, NORMAN FRANK, (individually), is the Vice President-Finance and Treasurer and a Member of the Salary Review Committee of CompuScan.

23. Defendant, SEYMOUR NAPS, (individually), is a Vice President and a Member of the Salary Review Committee of CompuScan Incorporated.

24. Defendant, *JULIAN F. OLNEY, (Business Consultant and Financial Advisor) is a Director of CompuScan Incorporated.

25. Defendant, JACOB MILLMAN, is a Vice President of CompuScan Incorporated.

26. Defendant, CAROL M. DARROW, (individually), is Corporate Secretary of CompuScan and a Member of the Salary Review Committee.

27. Defendant BARBARA BERGSTROM (individually), is Personnel Manager of CompuScan Incorporated.

28. Defendant, MARGUERITE M. SCHAEFFER, (individually), was the attorney for CompluScan Incorporated. Ms. Schaffer is now associated with Greenwood, Weiss and Shain.

29. Defendant Law Firm, Greenberg,

Margolis and Ziegler, is the Law Firm Ms. Schaffer was employed by and she was an Agent of said firm.

30. Defendant, Law Firm, Leon, Weill and Mahoney is Corporate Council to the Company CompuScan, Incorporated.

31. Defendant Company, Bessemer Securities Corporation is a major stockholder, appointing Mr. Burgin to the Board of Directors of CompuScan, for which he is the AGent of Bessemer Securities.

32. Defendant Company, Campagnie Participations et d'Investissements Holdings S.A. (CPIH) is a major stockhlder appointing Mr. Bailleul to the Board of Directors by nomination thru which he is their Agent. (CPIH is a Company of ELF-AQUITAINE; Aquitaine Systems and CPIH and ELF-AQUITAINE are French Companies.)

33. Defendant Company CompuScan is a Corporation, incorporated under the Laws of the State of Delaware in 1968, and is

qualified to do business int he State of New Jersey and is doing business in the State of New Jersey. Defendant CompuScan is an employer engaged in an industry that affects commerce and employs more than 100 employees per working day on each of 20 or more calendar weeks in a year material to this action. The Company has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701(b),(9) and (h) of Title VII 42 U.S.C. Section 2000e(b),(8) and (h).

34. Defendant Corporation, United Jersey Bank, is a Duly State and Federally approved Bank and Commercial Lending Organiztion and has sharing of the above material interest in CompuScan with Chase Manhattan Bank as a result of the same and or similar Security Agreements. All registered with the Security Exchange Commission.

ADMINISTRATIVE PROCEDURAL REQUIREMENTS

36. Plaintiff was denied any and all opportunities for internal appeal at the Company CompuScan by Defendant, NORBERT STEINBERGER, then (acting President) when he was dismissed.

37. Plaintiff, has sought State level assistance, but been denied all efforts.

38. Plaintiff, has sought Relief thru Federal Agencies.

39. Plaintiff attempted to file a RETALIATION and discrimination complaint within 180 days of the continuing discriminatory incidents, but the New Jersey Division on Civil-Rights refused to accept and Process the Complaint (at the Paterson Office. (See Pages and thru 31).

40. Plaintiff filed within 300 days of said continuous incidents with the Equal Employment Opportunity Commission on June 13, 1978. (See Pages and).

41. Plaintiff has received his "RIGHT TO SUE LETTER" and is filing within 90 days of receipt of same. (See Page) Received on July 20, 1978. (Plaintiff attempted to RESOLVE certain problems and conserve timely efforts by filing the attached E.E.O.C. Papers with the CLERK of the COURT but was not informed as to its value, and was told to FILE within 90 days. (See Page).

42. Plaintiff has attempted to obtain a JURISDICTIONAL DISMISAL Letter and has still on Appeal to Appropriate Administrative Agencies Requests for same, in order to properly invoke Title 42 U.S.C. Section 2000, Title VII. Inasmuch as the New Jersey Division on Civil-Rights refused to accept a timely Complaint the E.E.O.C. has "denied constructive filing" and refused to consider "initial instituting of procedures with a State or local agency with authority to grant or seek relief--etc."

Title VII P.L.92-261 Sec.706(e), allowing 300 days for filing.

43. Plaintiff, has met the 90 day filing, and the 20 day Amended filing per RULE 15 F.R.C.P., but is still attempting to Seek Administrative Relief for Title VII Jurisdiction with exchange of submissions to --

MR.HAROLD BROWN, Secretary of Defense, the Pentagon.

MR. JOEL SOLOMON, Administrator, General Services Administration.

MR. WELDON ROGEAU, Office of Federal Contract Compilance, Labor Dept.

MR. J. CARTER, President, thru his Administrative Assistant. MR. H.A.CARTER, Plaintiff shall present his Memorandums of Law to the Court when required to "Plead Title VII Jurisdiction."

44. Plaintiff, has appropriately filed with the Attorney General of the United States, with reference for relief

under E.O.11246, E.O.11764 and Title VI (See Page). Relief has been also sought through the Department of Health Education and Welfare and the United States Commission on Civil-Rights. (See Pages 34 and).

These communications have been for "Civil-Rights Violations Alleged" at "individuals" of Defendant State Agencies and the State Division on Civil-Rights. (See Page).

45. PLAINTIFF BELIEVES HE HAS "EXHAUSTED ALL ADMINISTRATIVE REMEDIES" before pleading in this COURT for JUDICIAL REVIEW.

STATEMENT OF CLAIM

46. Plaintiff, EUGENE S. NEUFELD sets forth the following as and for his Complaint, against the Defendants herein, and alleges as follows:

47. I am the Plaintiff, in this action. I reside at 200 W. 86th Street, Manhattan, New York. I am of the Caucasian Race, age 47, of the Jewish Faith and divorced. I am an Engineer by Education and Profession. I hold Academic degrees in Mechanical Engineering (BSME), Engineering Mechanics (MSEM), and Electrical Engineering (MSEE), from the (former) School of Engineering of New York University 1953; The Graduate School of Engineering of Stanford University 1955; and the Graduate School of Electrical Engineering, The Moore School of the University of Pennsylvania 1968, respectively.

48. I was engaged by defendant NORBERT STEINBERGER for DEFENDANT Company, CompuScan, and initially assigned the special task to be the Manager of Quality Control. I started employment on January 17, 1977.

49. Defendant, SEYMOUR NAPS, informed me on Friday, January 14, 1977 that he considered me (my credientials, experience) overqualified for the type of work desired and that just "common-sense" would suffice. Defendant NORBERT STEINBERGER informed me I would be reeviewed in three and six months for salary increase and that in one year my salary would be substantially higher, and that he wanted me to grow with the Company and work "close" to defendant SEYMOUR NAPS, a "key" man. Defendant STEINBERGER also informed me that after completion of reorganizing the Quality Control Department with my background I would technically qualify for any position in the Company and

that the Company had people that "stay" a long time.

50. Defendant, STEINBERGER, instructed Plaintiff, NEUFELD, to improve and to build the Quality Control Department to become more professional and acceptable to Customers, particularly Government Agencies. Although STEINBERGER initially indicated and promised a Quality Control Budget for operation, planning personnel, test equipment etc. defendant STEINBERGER and defendant CompuScan never produced same and the Quality Control Department of this sophisticated (electronically and technically) Optical Character Reading Company, lacked the basic, and fundamental Test Equipment common for such a standard industrial effort.

51. Plaintiff was supported and did hire five new test inspectors and during Plaintiff's employment he did train, supervise, manage and conduct work

including requesting salary reviews for employees on five occassions and obtaining merit increases for said test inspectors on four of these requests, despite the existence of problems in this Complaint-Action.

52. Plaintiff did treat all employees equally but a "Black" female inspector (Plaintiff hired), claimed "harassment and discrimination" when her work performance was noted to be below standards. On June 1, 1977, this "Black" female Quality Control inspector did threaten Plaintiff and Company Defendant CompuScan, that she would file a discrimination Complaint if she did not obtain a raise. (See Page).

53. Plaintiff had been informed of this person's allegations of harassment and discrimination, by Defendant STEINBERGER, the word discrimination at the time was not used but records from the State show differently. Upon Defendant STEINBERGER'S

direction Records were kept and "incidents" recorded in the Company personnel file of the "Black" female inspector (Marguerite Lee). Several memos were hand delivered to defendant BERGSTROM, including a chronological bibliography of "events" concerning similar problems.

54. Plaintiff continuously requested of Management, defendant STEINBERGER, defendant DARROW, and defendant BERGSTROM; CompuScan-Assistance and guidance concerning Corporate Policy in these matters. There was an incresing and growing problem of insubordination, absence, poor work, and work habits, false time cards and other disciplinary matters concerning Ms. Lee that created "bad-morale" and a poor atmosphere for the others in the Quality Control Department. On at least one occassion, the male caucasian, Senior Mechanical incoming inspector remarked that "if a white person

behaved like 'M.Lee', they would be fired." Defendants refused to permit any form of discipline. the Quality Control Department was burdened with a reduction in productive capacity.

55. Plaintiff learned from defendant STEINBERGER on at lest two brief occasions, that STEINBERGER felt that "Black" people (the word "Schvartze" was used meaning "Black" in Jewish), are not to be expected to understand such things as Administration, Business, Authority, etc., and hence essentially they do not have to perform as others, such in effect as following assignments, clean up test areas, follow and obey Company rules and even didn't need to sweep floors for cleanliness as Caucasians did in the Quality Control Department (including Plaintiff). STEINBERGER in effect meant that this "Black" woman Lee was culturally deprived. This same person Lee was let off work 45

minutes early Tuesdays and Thursdays to complete credits for a Community College 2 year degree in Business Administration. The file-records contain a memo where her husband called in to work one day suggesting she be "layed" off to collect unemployment insurance (since he was in business) Ms. Lee "did not have to work."

56. Plaintiff, thru observation and experience, learned CompuScan and defendants afforded special treatment to employees based upon color.

57. Defendant STEINBERGER also informed Plaintiff, during such conversations, that Plaintiff, being Jewish, should "know and understand" these "business things." Plaintiff, observed and learned that the experiences at CompuScan showed policies and employment practices that were based upon color/race/religion.

58. The "Black" woman inspector Lee filed discrimination complaints on June

30, 1977. Plaintiff was never informed of this by CompuScan, STEINBERGER, DARROW or BERGSTROM or SCHAFFER, even though Plaintiff was named Respondent.

59. Defendant, STEINBERGER dismissed Plaintiff in retaliation of and because of these alleged filed complaints (where none had merit for the State and the E.E.O.C. found no "cause" and dismissed same). Defendant STEINBERGER told Plaintiff he had to dismiss and terminate Plaintiff in order to avoid a State or Federal employment compliance investigation of the Company CompuScan, as a result of "threats" of the "Black" inspector Lee. Defendant STEINBERGER also told Plaintiff that Lee claimed she was "black and blue" from Plaintiff and would "sue." When Plaintiff requested rebuttal etc. STEINBERGER claimed he had to let Plaintiff "go" for fear of being sued and was acting with knowledge of Counsel and Board, because Plaintiff

requested to speak to them. Defendant STEINBERGER said he would "deny" all conversations in COURT if necessary to protect the Company.

60. Plaintiff was dismissed instantly on a Friday and had to argue with STEINBERGER to remove and empty personal effects from his desk. CompuScan Policy, before and since (thru knowledge) was upon dismissal to immediately physically accompany persons to the door and send personal items to their home. During the 20 or 30 minute "exit" discussion which consisted of "you must leave" by STEINBERGER, Plaintiff requested and was denied a Transfer to Engineering or Sales. Plaintiff has contacts with several Banks CompuScan has not sold computers. Plaintiff requested internal review with the Board etc. Everything was denied. The offer to obtain work by Consultation was left open but repeated telephone calls to

STEINBERGER to discuss same, were not answered. Plaintiff states and restates here --

a) He was never told an actual complaint was filed with the STATE or EEOC.

b) He was never told he was a named Respondent in at least one complaint.

c) He was never told the Company was served a Summons Complaint and then interrogatories all these addressed to Plaintiff (and never informed).

d) He was never told the Company answered these Summons Complaints and interrogatories.

STEINBERGER said, he did not want to be "investigated" and would "do anything" to prevent being sued i.e. threatened Civil and Criminal actions from an employee falsely alleging harassement, discrimination and assault. STEINBERGER refused to permit confrontation or Presentment to the authorities.

STEINBERGER said "officially" Plaintiff's dismissal was to to obtain a more "experienced" Quality Control Manager. STEINBERGER also claimned he was surprised plaintiff "lasted" in said position seven-months. Plaintiff was never notified or told of any dissatisfaction before said "instant-dismissal" nor were any attempts made by STEINBERGER or NAPS for personnel problem conciliation. STEINBERGER and NAPS had conferences with said complaintant person(s) but Plaintiff never was informed or participated. Extensive documentation exists as directed by STEINBERGER in the files of BERGSTROM.

61. During Plaintiff's employment, Plaintiff hired five inspectors. Two were female and one was the "Black" complaintant, Lee. Management supported all requests for Salary Increases with the exception of one. The person that was refused an increase was a female Caucasian

Checkoslovakian immigrnt, from Canada, claiming an advanced degree in Chemistry and demonstrated by performance punctuality, reliability, hard working and of intelligence above the work. Attempts to properly advance her with her analytical mind were restrained. Plaintiff claims the Salary Review Committee acted with Prejudice by refusing a requested raise in the light of the fact that on or about February 27, 1978, James Sincaglia, Chief Bureau of Enforcement, New Jersey Division on Civil-Rights, informed Plaintiff that the "Black" female complainant Lee had received a raise from CompuScan, after Plaintiff left.

62. CompuScan employs many workers of foreign national origin and the employment treatment given them was different than American born workers and different than "special" treatment for "Blacks."

63. Defendants showed preferences of employment opportunity, advancement, benefits and vacations (of extended time) provided for those from select national origin. While Hispanics, Asians, and Checkoslovakian immigrants and citizens had incomes and opportunities less than Americans (even though they had professional academic creditials in the Sciences, Math or Engineering from their homeland, birthplace, or America) growth and renumeration were restrained. Statistics of turnover, resignations and dismissals can show this as a fact. Continuous dissatisfaction of employees exists as a result. However, preference is shown to Hungarian origin and advancement, position, income, fringe benefits are awarded regardless of qualifications, experience, performance or credentials.

64. Those that originated from origins of similar culture of Defendant

STEINBERGER were afforded opportunities denied experienced Chinese and other Asians. A noted difference of ooportunity was apparent.

65. Defendant, Company CompuScan required special-typing for test purposes, especially the Quality Control Department. Said work was performed by the spouses of the previous Quality Control Manager and the Production Manager. (Mrs. Louis Prieto and Mrs. Peter Sandor.) Requests for a continuous replacement of this need was looked over and refused by Defendant SEYMOUR NAPS and defendant STEINBERGER showed little interest. Such lack of support interfered with the efficiency of the Quality Control Department. Refusal of such needed typing interfered with the productive relationship of Plaintiff with the Company CompuScan. Marital status was a practical requirement for certain Managers such as Prieto and Sandor, to do

their job.

66. Defendant BARBARA BERGSTROM supplied a typist as the result of continued requests for typing needs. Out of 500 pages of special paper, 350 were ruined by improper typing. The typist told plaintiff she never had a typing lesson. the typist was transferred to another department. She was the daughter of an employee. The "Black" complainant woman Lee was offered a transfer to Production by Production Manager Clark Hughes, but Lee refused because she did not obtain an offer for a raise. Anoither female employee was transfered from one Department to a different job. When and before Plaintiff was dismissed, a transfer to Engineering was requested but defendant STEINBERGER denied such transfer to plaintiff.

67. Defendant STEINBERGER promised Plaintiff salary-review, advancement, operating budget, support for test

equipment etc., to perform the job of Quality Control Manager. These were only provided to Supervisors following Managements' apparent discriminatory handling of Complany Personnel. Written requests to STEINBERGER and SEYMOUR NAPS for repair of certain electrical power lines and for basic test items were denied, hampering Quality-Control's Operation.

68. Defendant MARVIN WEISS told Plaintiff, that he as Vice President viewed the Quality Control Manager as the "Conscious of the Company," hence, from experience then CompuScan's consciuos was "Unconsciable."

69. Several written requests, along with verbal discussions to SEYMOUR NAPS, Vice President in charge of Purchasing, Production, Receiving, Shipping and Field Service, and to his people SUE THIBADEAU, PETER SANDOR, JOE EHRLICH and CLARK HUGHES for the following -- need to coordinate

work, special typing, special cables, repairs, equipment, etc. -- items and services which a Quality Control Department needed and normally had for growth and efficiency. These resources not being under the control of STEINBERGER were denied and withheld from Quality Control by SEYMOUR NAPS interfering with Plaintiff's work relationship with CompuScan. Specific requests even for work-safety, made to those mentioned in this paragraph were denied Plaintiff.

70. Plaintiff had verbal understandings with Hispanic workers for special repairs that Defendant SEYMOUR NAPS would permit to be made on equipment but which Plaintiff would not pass as Quality Control Manager.

71. On occasion defendant SEYMOUR NAPS would "waive" Quality Control Tests on non-acceptable units and sign "in lieu" of Plaintiff.

72. Plaintiff observed in early February 1977, that weekly Production Reports issued by defendant SEYMOUR NAPS showed numbers of items and dates of testing and shipping to be different than the records in Quality Control and that some items marked Q.C. Tested never even appeared in the Q.C. Department, but were circumvented by seymour naps who had Administrative Control over Production-Shipping and Field Service. Plaintiff collected old weekly reports and current reports and spoke to Louis Prieto, his predecessor as Manager of Quality Control. Such irregular reporting activities occured before. Plaintiff presented this information to Defendant STEINBERGER, showing that certain reports claimed Q.C. Tested items that either never physically appeared from production for Q.C. Test or that dates were premature and/or numbers of Quantities exagerated. Records and

Production data were altered.

73. Defendant STEINBERGER looked at the data and informed Plaintiff to change Q.C. numbers and dates to coincide with those of Production i.e. SEYMOUR NAPS. These discrepancies represented the shipping of equipment alleging testing that was not performed in the Q.C. Department and also showed false dates and quantities. To document the differences of what was happening, Plaintiff sent to Defendant STEINBERGER a weekly Q.C. report on every Friday. This was not distributed for obvious reasons, as it would easily be noticed that internal problems existed. Said reports exist in STEINBERGER'S files, a set in the Q.C. files, and a set in the Q.C. Manager's Desk, and a partial set in weekly files. Claims by Clark Hughes and Sue Thibadea that the differences in dates, numbers and whether Q.C. or Production tested the equipment was not important or

Plaintiff's concern and that what SEYMOUR NAPS did was at his discretion.

74. Plaintiff continuously attempted to achieve success in stopping these internal practices, for Plaintiff considered them to be "wrong." In addition, Plaintiff retained Centronic Computer Output records of over 90% of tested machines that were repaired and filed them in the Q.C. office in two boxes where Plaintiff stored test and other personal records of his predecessor, Mr. Louis Prieto.

75. Plaintiff observed that in addition to Employment Discrimination practices at CompuScan, success was to "look" the other way or to set Plaintiff's signature on test documents improperly as STEINBERGER suggested. During one week alone, at least "twelve" 12 computers were held back due to not passing Q.C. tests, yet production records showed the units

were functioning. It was obvious that Production (SEYMOUR NAPS) desired a Q.C. Manager to certify to customers, Commercial and the Government, "misrepresented final test data." There was a refusal to institute Controls or statistical analysis to record reliable information.

76. The consequences of defendant CompuScan's employment practices violated the Law and caused Plaintiff to lose his position unlawfully.

77. At all times material herein, Defendants and Company CompuScan, Inc., have intentionally engaged in policies and practices made unlawful by Section 703(a) and Section 704(b) of Title VII of 42 U.S.C. Section 2000e et sequens. Defendants also treated Plaintiff in a manner which denied Plaintiff due process, equal rights, and equal protection and equal opportunity afforded to others based on sex, color, race and national origin.

78. Defendant, C.Y. ALSTON, Branch Manager of the New Jersey Division of Civil-Rights, accepted a Discrimination Complaint on June 30, 1977 naming Plaintiff as a Respondent. Said Summons and Complaint was sent to Defendants at CompuScan. Said Complaint was ANSWERED by Defendant MARGEURITE M. SCHAFFER, ESQ. In the Service of the Complaint C.Y.ALSTON violated the Rules of Practice and Procedures of the New Jersey Division on Civil-Rights. the Service of said Complaint was also not to Plaintiff. STEINBERGER, DARROW, BERGSTROM and SCHAFFER knew of and answered a Complaint and Interrogotories directed to Plaintiff. Plaintiff never authorized any person to represent or answer for him in this or similar Actions. (This Complaint was by M. Lee) See Page .

79. Plaintiff was denied knowledge of an action which did coerce and put

defendants under pressure by the State and Federal Government. (In at least one Complaint). This resulted in the dismissal of Plaintiff in retaliation. The Concealment of this knowledge prevented Plaintiff from becoming part of the State Investigation and from being protected under State Law from being terminated. These intentional acts caused legal damage to Plaintiff and personal injury and the loss of property (employment). These acts denied the rights, processes and protections others had, but not Plaintiff. these planned and intended acts ":barred" Plaintiff from entering into any ACTION or any choice for rebuttal or defense.

80. On February 17, 1978 (See Page) Plaintiff first learned of the existence of and the fact that he was named on a Complaint, and hence had the facts upon which to base a Complaint (on retaliation).

81. On February 17, 1978, Plaintiff submitted a Complaint of Discrimination Retaliation, prepared by the American Jewish Coingress, to C.Y.ALSTON, this Complaint was refused and again, a form Complaint (See Page). C.Y.ALSTON not only mechanically, physically refused to process a timely Complaint but on the same day, C.Y. ALSTON refused to let Plaintiff see the Complaint that named him as a Respondent. Plaintiff was also not aided by C.Y. ALSTON to learn what he might do concerning the situation.

82. Inasmuch as C.Y.ALSTON had accepted, assisted and processed for "Black" citizens Discrimination Complaints on June 30, 1977 and on July 7, 1977 against the Company CompuScan -- but refused Plaintiff's Complaint or any assistance, C.Y.ALSTON and the Division on Civil-Rights, knowledgeably denied Plaintiff Due Process and Equal-Rights and

the Rules of Practice and Procedure of the New Jersey Division on Civil-Rights. The contents of the file "M.Lee vs CompuScan, Steinberger and Neufeld," had one page accusing Plaintiff of assault and battery. The Services of C.Y. ALSTON and the STATE AGENCY were denied to Plaintiff based on color/race/religion.

83. On Tuesday, February 21, 1978, Plaintiff spoke with Defendant James Sincaglia, Chief Bureau of Enforcement of the New Jersey Division on Civil-Rights. SINCAGLIA informed Plaintiff he "had a right to see and have the file" as a named Respondent (even though C.Y.ALSTON claimed it was Private and refused to let Plaintiff see the file on Friday, February 17, 1978). SINCAGLIA said he would send the information to plaintiff. On Tuesday, February 28, 1978, Plaintiff again telephoned defendant SINCAGLIA that he did not receive the information and also

requested "intervention procedures" which SINCAGLIA also informed Plaintiff was his Right under State regulations. On March 13, 1978, Plaintiff mailed a "Certified-letter" to SINCAGLIA acknowedging receipt of a three(3) page Complaint of information requested (Docket #EBG2W-13297, Lee vs. CompuScan, Norbie Steinberger and Eugene S. Newfield) and also requested how to intervene as SINCAGLIA suggested previously. The "Certified-letter" of March 13, 1978 (received by SINCAGLIA on March 16, 1978) was never answered. On April 4, 1978, in a telephone conversation, SINCAGLIA informed Plaintiff that the Division on Civil-Rights did not have to and that he would not answer the March 13, 1978 request for intervention. Hence, defendant SINCAGLIA sent papers to Plaintiff, refused by ALSTON; initially indicated intervention could and he would investigate and then refused to ANSWER

certified mail. this again was a denial of help, assistance provided to others but not to Plaintiff, of his Civil-Rights, of due process, equal rights and being barred from Intervention and State Proceedings was also denied Equal Protection because of color/race/religion.

84. On June 23, 1978, Plaintiff made a formal complaint with the New Jersey Public Advocate Division of Citizen Complaints at Trenton with Mr. R.T. Falls.

In a letter dated July 3, 1978 to C.Y.ALSTON, R.T. FALLS requested an explanation to Plaintiff's allegations of C.Y.Alston's office "acting improperly" on February 17, 1978. C.Y.ALSTON never answered the letter! In subsequent telephone calls and communications with the Public-Advocate thru "certified-mail" it was obvious that this State Agency understood the situation but also refused to "get involved" under the pretext of the

issues with the matter not being of "public-interest." The problems with "Complaints" lodged against the Division on Civil-Rights have and are of Public-Interest!

The decision of the Public-Advocate STANLEY C. VAN NESS to "not get involved" is discriminatory and similar situations challenging the Public-Advocates Decisions exist! These refusals after knowing the facts of the mattrer as revealed by Mr. Ray T. Falls in a letter dated October 3, 1978, "I know you intend to pursue this through FEDERAL channels and hope it will eventually be resolved to your satisfaction --- etc." clearly indicates STANLEY C. VAN NESS knew their was Jurisdiction for Constitutional violations in stating this opinion, yet VAN NESS offered no State remedy. Hence, the knowledge of and as an attorney and acting as the Public-Advocate under State Laws, VAN NESS refused to

prevent the continuing Civil-Rights Denials to Plaintiff or exert any of his powers on and for Plaintiff. The refusal to do so is alleged to be based upon arbitrary, capricious and frivolous decision making processes for clearly the Public Advocate knew all the issues and details from submitted documents.

85. Thru initial telephone conversations on June 29, 1978, with Mr. E. P. O'Neill at (609)292-6767 and thru a certified letter to Mr. Siavage of August 4, 1978, a formal complaint and request for investigation and what should be provided concerning monitoring etc. "the conduct of public officers and public employees" the New Jersey Commission on Investigation was communicated with.

In an answer from Peter M. Schirmer, Esquire - Counsel - The State Commission on Investigation claimed "no involvement" under the pretext of the matter being

individual, having higher priorities and being a little unclear as to what happened! In a certified answer addressed to Mr. Joseph H. Rodriguez, dated August 24, 1978, the issues and complaint were clarified as to being Against the New Jersey Divsion on Civil-Rights and POTTER, SINCAGLIA and ALSTON for violating their own Agency Rules and for refusing to accept a Complaint and Barring Intervention, and for the New Jersey Division on Civil-Rights "rubber stamping unlawful and "unconstitutional" employment practices in New Jersey. In letters dated September 5, and October 25, 1978, answering Plaintiff's letter and subsequent telephone call, Mr. Peter M. Schirmer, Esquire says: (answering for Chairman Rodriguez) "---we would like to assure you that we generally understand the gist of your complaint --- etc." and then indicates limitations and selectivity --- "pressing priorities." ---that Plaintiff

would understand. The Commission is impowered to Investigate management of affairs of State Departments or Agencies (N.J.S.A.52:9M-4) and other matters. Concerning funds, the Division on Civil-Rights itself had a surplus of $34,000 in 1977 as reported. in a "certified-letter" dated August 28, 1978, to the Governor of New Jersey: Honorable Brendon T. Byrne #400307 (Received in Trenton on September 1, 1978) Plaintiff - brought these matters to the attention of the Chief Executive of New Jersey - and requested the Government to consider a Special Funding to either the New Jersey Commission of Investigation - Mr. Joseph H. Rodriguez, to the Puyblic Advocate - or to the Division of Citizen Complaints - to see if the Division of Civil-Rights were not truly violating their own Procedures and State Laws etc. - this letter to the Governor was never answered. As reported by Linda Lamendola in the

Newark Star Ledger, June 9, 1978, that the Assembly Oversight Committee of New Jersey has started an investigation - "Panel to launch rights agency probe." The individuality of my complaint and the charges against the New Jersey Division on Civil Rights and ALSTON, SINCAGLIA, RODNER, MUSICANT and POTTER are "not singular and are of Public Interest." The decision not to investigate to prevent further continued violations of Citizens Rights by Chairman RODRIGUEZ is arbitrary and limited and may be prejudiced, since statistics show Plaintiff's complaint was not singular.

86. On June 29, 1978, Plaintiff delivered a one page letter addressed to Attorney General JOHN J. DEGNAN at 1100 Raymond Boulevard, Newark, NJ. The letter requested information concerning Plaintiff, in the files of C.Y. ALSTON, which ALSTON refused. This one page request was received and signed by DONALD ALTMAN,

Assistant Attorney General. MR. ALTMAN introduced Plaintiff to Defendant RODNER who spoke with Plaintiff for about 20 minutes. (Said conversation is documented in a six(6) page letter to DEGNAN dated July 8, 1978, #328592, received on July 11, 1978 by THERESA MOORE). In answer to the "Right to Know Request" of June 29, 1978, Plaintiff received a July 6, 1978 letter from DEGNAN signed by RODNER containing 23 pages from the file SINCAGLIA sent only three pages. Then in August 10, 1978 RODNER sent 3 additional pages for a total of 26 pages. All of these were in a file naming Plaintiff as a Respondant and were in the possession of ALSTON on February 17, 1978 at Patterson. The letter dated July 8, 1978 to DEGNAN was "cosmetically" answered by RODNER for DEGNAN and the facts of the instant matter were misrepresented. The Law is and was improperly quoted and the letter is misleading, tending to

convince the reder that requested information was included and supplied when it was not! And information not requested was supplied which was shameful-evidence!

87. In answer to Plaintiff's letter dated September 9, 1978, to DEGNAN (answered by MUSICANT) again the phenomena of misrepresenting the facts of the instant matter appears. Not only does MUSICANT misquote and falsely state the content of the Laws and Procedures of the Divsiion on Civil-Rights but MUSICANT attributes statements to Plaintiff which were never written or said to MUSICANT or SINCAGLIA. These statements would, if ture, further indicate the complete irregularity and incongruity of RODNER and MUSICANT as counsel and of ALSTON and POTTER as administrators of Civil-Rights. Furthermore a ten(10) page letter to DEGNAN addressed "Esquire, individually and himself" dated August 24, 1978, #590943

(received by Ben W. Rounds(?) on September 2, 1978) clearly presented the facts of ALSTON'S behavior.

88. In a similar certified request for a "Right to Know" of another complaint filed against CompuScan as a result of the Lee Complaint - which was sent to Deputy Attorney General Bliss on August 28, 1978; was answered by POTTER claiming SINCAGLIA would provide the information. SINCAGLIA received a hand delivered copy on September 26, 1978 and as in the past SINCAGLIA does not answer letters. This request concerned further evidence concerning Lee-CompuScan and Plaintiff.

89. These actions of false representations and concealement of material chronological facts, with knowledge of the facts, to parties ignorant of the truth of the matter((i.e. DEGNAN, BLISS) by RODNER and MUSICANT.) with the intent that the ignorant party

should not act or should fail to do something which should be done to enforce Plaintiff's rights at a proper time, were acts and are acts damaging to Plaintiff. They have been acts by ALSTON, POTTER, SINCAGLIA, RODNER and MUSICANT to prevent the Attorney General from acting in a more proper and acceptable manner. These acts are and were not "in good faith" in "discretion" but intentional and arbitrary.

90. Attorney General DEGNAN in addition to being notified as these certified communictions attest to, through letters, was on two occcassions unsuccessfully telephoned at (609)292-4965, on Tuesday, August 7, 1978, and on Friday, October 6, 1978 (thru a Secretary apparently to Mr. Skillman by the name of Ms. Goeke). Plaintiff requested to transmit to DEGNAN that the situation may not properly be presented and that plaintiff asserted the facts of the matter

were misrepresented by RODNER and MUSICANT. DEGNAN in these matters and in matters of Contractual non-compliance of State Agencies under Federal Contract has chosen to provide pretext excuses of verbal agrements, not to enforce any form of punishment to gross violators but to provide gracious exists for individuals found abusing Public Office. These actions favor color/race, are politically determined and in the instant matter had consequences of violating Plaintiff's Civil-Rights. However, all defendants have concealed, withheld and covered-up a situation the cause of which is still uncontrolled and the number of victims unknown.

91. At all times herein defendants ALSTON, SINCAGLIA, RODNER, POTTER, SMITH, MUSICANT, DEGNAN and VAN NESS and RODRIGUEZ had acted with knowledge in their official capacities and as individuals under the

color of State Law, have communicated between themselves and Defendants, CompuScan, Bergstrom, Darrow, Schaffer and Steinberger and Greenberg, Margolis and Ziegler concerning at least one Discrimination Complaint involving CompuScan-Neufeld and Complainant(s) -- and thru these concerted actions Plaintiff was barred from State "discovery proceedings" and denied due process, equal rights and equal protection -- provided to others.

92. At all times herein defendants, NAPS, STEINBERGER and BERGSTROM, by denying necessary operating support to Plaintiff and by requiring Plaintiff to capitulate integrity and ethics did so with intent and did tortuously interefere with Plaintiff's employment. All corporate affiliated officers thru omission and neglect permitted these acts. In addition, defendant STEINBERGER claimed that the Corporate Counsel, Attorney, Board, knew of

and approved of his actions in dismissing Plaintiff.

93. The actions of NAPS and STEINBERGER were not limited to employment discrimination and misrepresented technical and production date but inventory was also altered. On one occassion a Mr. Clark Hughes, (reporting to NAPS) attempted to have plaintiff "incorrectly" mark computer destinations. On another occassion a Q.C. inspector found a "series" of fifty(50) serial numbers missing from statistical data -- this was equivalent to over $2,000,000 unaccounted on records. Displeasure was shown to Q.C. by CompuScan when such facts were revealed.

94. In June 1977, ROBERT A. LEONARD resigned, but remained on as a Consultant to the Company. After this period difficult times appeared. The Company experienced over a $7,000,000 loss in 1977 and a great reduction in Sales. The long

term debt is also $7,000,000 and prediction of future trends unreliable. What was predicted as a $3,500,000 yearly loss in May 1978, became a $7,000,000 loss by August 1978, and unknown factors still remain concerning 1977 operations!

95. The employment practices of CompuScan have had the effect of not being able to attract the "labor" needed on all levels and existing people becoming discouraged, resign and leave, and those who try to do the right job are dismissed. The accumulation of bad purchasing, component acceptance, premature Computer System release and shipment and uncontrolled production has culminated in a weak financial Corporate image.

96. Defendant Banks Chase Manhattan and United Jersey, realising the direction management allowed the Company CompuScan to follow, entered into and signed a Security Agreement with CompuScan that virtually

gives complete financial and other control of CompuScan to said Banks. In the event of total adverse financial distress creditors could become subjugated to a line of priorities.

97. The abuse of employed personnel, the manipulation of records, the lack of Corporate integration and the prevailing inexperience and at times malicious behavior of Defendant Managers and personnel in actions complained of, has brought the Company to a paresent difficult state. Equipment performance is failing and the need for great leadership is critical. This present condition is simply a consequence of selfishness and greed that caused defendants to engage in the practices stated, which are gross violations of the law!

And in a similar manner Defendant Public Employees have and continue to violate Individual-Rights and Constitutional Guarantees.

CAUSES OF ACTION

98. AS FOR A FIRST CAUSE OF ACTION - Plaintiff repeats and realleges each and every allegation contained in paragraphs marked "52" through "62" of this complaint with the same force and effect as if set forth at length herein. Defendants Compu-Scan, BAMBROUGH, LEONARD, STEINBERGER, WEISS, NAPS, FRANK, DARROW and BERGSTROM provided special and different employment treatment at CompuScan based on color/race which included disparate discipline, fringe benefits, performance reviews opportunity to transfer, immunity from dismissal and pay raises based upon color/race. Plaintiff opposed these unlawful practices and was dismissed in retaliation. By these and other acts Defendants discriminated against Plaintiff in violation of 704(a) of 42 U.S.C.2000e-2al. Civil-Rights Act 1964 Title VII "color-race."

99. AS AND FOR A SECOND CAUSE OF ACTION - Plaintiff repeats and realleges each and every allegation contained in paragraphs marked "61 through 64" of this complaint with the same force and effect as if set forth at length herein. Defendants CompuScan, BAMBROUGH, LEONARD, STEINBERGER, WEISS, NAPS, FRANK, DARROW and BERGSTROM provided special and different employment treatment at CompuScan based upon national origin such as opportunity, advancement and salary increases. Plaintiff treated employees equal and opposed these unlawful practices and was dismissed in retaliation. By these and other acts Defendants discriminated against Plaintiff in violation of 704(b) and 703(a) of 42U.S.C.2000 et seq. Civil-Rights Act of 1964 Title VII - "national origin."

100. AS AND FOR A THIRD CAUSE OF ACTION - Plaintiff repeats and realleges each and every allegation contained in paragraphs marked "55, 57" and that Defen-

dant STEINBERGER claimed that Plaintiff NEUFELD should and is expected to "know" and understand "Administration" better than "blacks." STEINBERGER expressed the converse expectations of more from JEWS than from BLACKS based upon race/religion. Greater Knowledge, Productivity, Understanding from one person and less from another because of culture etc. but no special benefits applied. Defendant STEINBERGER discriminated against Plaintiff in Violation of ¶703 and ¶704 of U.S.C.2000 et. seq. C.R.A.1964 Title VII. This was done to the extent that only "blacks" were expected to file discrimination compalints, but not Plaintiff, and if a "reverse" discrimination complaint was filed. STEINBERGER said he would deny private conversations. "religion."

101. AS AND FOR A FOURTH CAUSE OF ACTION - Plaintiff repeats and realleges each and every allegation contained in

paragraphs marked "66" and that Defendants CompuScan and STEINBERGER and NAPS offered and gave internal transfers to at least three (3) female employees for various reasons. Plaintiff was denied same prior to and at dismissal. This was Discrimination against Plaintiff in violation of 703-42 U.S.C.2000 et seq. C.R.A. 1964 Title VII. "sex."

102. AS AND FOR A FIFTH CAUSE OF ACTION - Plaintiff repeats and realleges each and every allegation contained in paragraphs marked "58, 59, 60, 78" and that Defendants CompuScan, STEINBERGER, DARROW, BERGSTROM, SCHAFFER, Greenberg, Margolis and Ziegler: did not have the Right or agency permission or approval to accept a Discrimination Summons, Complaint and Inter-rogatories and provide answers for them, addressed to Plaintiff naming Plaintiff as a Respondent claiming and misleading the Division on Civl Rights that plaintiff was represented. This act con-

tributed to conceal information which barred plaintifff from the action and was in violation of Title 42 U.S.C.§1981, 14th Amendment. Equal Rights Under the Law, and any State Pendent Statute concerning misrepresentations.

103. AS AND FOR A SIXTH CAUSE OF ACTION - PLAINTIFF REPEATS AND REALLEGES EACH AND EVERY ALLEGATION CONTAINED IN PARAGRAPHS MARKED "78, 79, 80, 81, 82, 83 AND 91," AND THAT DEFENDANTS ALSTON, SINCAGLIA, POTTER, MUSICANT, SMITH, RODNER and DEGNAN - violated the Rules of Practice and Procedure of the New Jersey Division on Civil-Rights, concerning-including but not limited to the following Title 13 Subtitle C. Division on Civil-Rights Chapter 4 Rules of Practice and Procedure: 13:4-3.b - Service of Complaints, 13:4-4.1 - Aggrieved Persons, 13:4-4.3 - Rights of Parties, 13:4-51 - Pleadings, Number of Complaints Filed - 13:4-3.2, Motion to Intervene -

13.4.65, Method of Service - 13:4-7.1; etc. and by so doing barred plaintiff from being protected by the State Law Against Discrimination - Title 10.5 et seq. N.J.S.A. "10:5:12d reprisals." Hence above listed defendants ( ) "derived plaintiff of rights, privileges and immunities secured by the Consitution -- etc." and was in violation of Title 42 U.S.C. 1983 Deprivation of Rights Under Color of Law.

104. AS AND FOR A SEVENTH CAUSE OF ACTION - Plaintiff repeats and realleges each and every allegation contained in paragraphs marked "86, 87, 88, 89, 91, 90" and that Defendants ALSTON, SINCAGLIA, POTTER, MUSICANT, SMITH, RODNER and DEGNAN -- did after being informed of the true facts of the SIXTH CAUSE OF ACTION ( ) - "conspire to deprive directly and indirectly plaintiff of his equal protection under law, etc. etc. and in so doing barred and prevented plaintiff

from (State) adjudication as to what occurred" violated plaintiff's rights under Title 42 U.S.C.1985(3) Conspiracy to interfere with Civil-Rights - depriving persons of rights or privileges.

105. AS AND FOR AN EIGHTH CAUSE OF ACTION - Plaintiff repeats and realleges each and every allegation contained in paragraphs marked "84, 85 and 90, 91" and that Defendants VAN NESS, RODRIGUEZ and DEGNAN all through detailed Communications admit to understand the facts of and had knowledge of the alleged wrongs done and mentioned in the SIXTH and SEVENTH CAUSES OF ACTION ABOVE (

) all having the power to prevent or aid in preventing the commission of same "neglected or refused to do same - "- in so doing violated Plaintiff's rights under Title 42 U.S.C. 1986 - Neglect to prevent (Section 1985 above.).

106. AS AND FOR A NINTH CAUSE OF ACTION - Plaintiff adds CompuScan etc. in the Conspiracy to Deprive Plaintiff of his Civil-Rights ty the extensive use of Proceedings with the New Jersey Division on Civil-Rights and the Equal Employment Opportunity Commission - Defendants CompuScan, STEINBERGER, DARROW, BERGSTROM, SCHAFFER, Greenberg, Margolis and Ziegler did participate in Discovery and were acting "under color of Law," and by so doing did violate Plaintiff's rights, bar and deny and conspire to do same and with Knowledge continue to violate these Civil-Rights, and these were those violations under Title 42 U.S.C. 1983, 1985 and 1986.

107. AS AND FOR A TENTH CAUSE OF ACTION - Plaintiff alleges and states the requirements of and actions of Defendants CompuScan, NAPS, STEINBERGER and BERGSTROM in denying and preventing Plaintiff to institute and manage a proper Quality Control Department was torturous interference

with his employment with CompuScan, that NAPS, STEINBERGER and BERGSTROM's requirmenent(s) for typing to be provided by a spouse was deiscrimination based upon marital status, that the "instant dismissal" without notice, transfer or rebuttal was "unlawful discharge" and also unlawful *violation of an employment contract, that the submission of personal and professional ethics to "change data to conform to production" was to "misrepresent" and that STEINBERGER in believing M.Lee was threatening to file suit, civil and criminal was "concealing information" - all these are violations of specific New Jersey State pendent statutes.

108. AS AND FOR AN ELEVENTH CAUSE OF ACTION - Plaintiff alleges that Defendants ALSTON, SINCAGLIA, RODNER, MUSICANT, POTTER, SMITH, DEGNAN in their refusal to accept a timely Discrimination Complaint

*Breach of contract and injury to property N.J.S.A.2A14-1.

caused the EEOC to issue a non-Jurisdictional-Dismissal and hence violated Plaintiff's-Rights under Title 42 U.S.C. 1981, 1983, 1985 and 1986.

109. AS AND FOR A TWELFTH CAUSE OF ACTION - Plaintiff claims with respect to Defendant Chase Manhattan Bank (N.A.) and United Jersey Bank, a prior Priority Claim as a Third Party as a lien creditor without knowledge of the security interest before it was perfected - having been "barred" from effecting Judgement against CompuScan et.al. by these actions in this Complaint. Plaintiff thru Pendent action of the Court establishes a Third Party Priority Right and filing for same pursuant to the Uniform Commercial Code, Artle 9, Part 3 and 4.

110. AS AND FOR A THIRTEENTH AND FINAL CAUSE OF ACTION - all Defendants acted at all times in positions concerning employment and civil-rights, with the intention of doing all acts performed by

maliciously interfering with, and discriminating in employment rights and by arbitrary, fanciful and clearly unreasonable discretionary acts in the interpretation and lack of providing State Rights in Discrimination and Civil-Rights, and violated plaintiffs rights of the Fifth, Thirteenth and Fourteenth Amendments as to still concealing additional Discrimination Complaint facts. 42 U.S.C. 1981, 1983, 1985 and 1986. Ref. "Right to Know" 47:1A N.J.S.A.

PRAYER FOR RELIEF

111. The defendants' wrongful and unlawful acts, and the treatment which the Plaintiff was accorded as alleged herein, in employment discrimination and discharge-termination and in appeals-attempts with the State Division on Civil-Rights, the Public Advocate of New Jersey, the State Commission on Investigation and the Attorney General of New Jersey, have caused the Plaintiff to lose his position and benefits, and deprived Plaintiff of Guaranteed-Federal-Rights, these actions are alleged Constitutional violations and were and remain, arbitrary, capricious, racially discriminatory, unlawful and frivolous.

Wherefore in view of the foregoing Plaintiff respectfully prays this Court to convene a Jury, to advance this case on the docket, to order a speedy hearing at the earliest possible and practicable

date, cause this case in every way to be expedited and upon such hearing to_

(a) Issue a Declatory Judgement that Defendants's Acts, Policies, Practices and Procedures complained of herein violated Plaintiff's-Rights as herein stated.

(b) Issue a Declatory Judgement on or to; and an Injunction against Defendant's past and continuing "awarding of pay raises based solely on color/race" as being in violation of Federal Civil-Rights Statutes and as being in violation of Constitutional amendments affecting equal rights of other citizens. Adjudicate defendants' actions and agreements "under-color of law" with each other and Complaint(s) as filed with the New Jersey Division on Civil-Rights as being Unconstitutional and effected under "duress".

(c) Grant Plaintiff a permanent injunction enjoining the defendants', their officers, agents and employees and those acting in

concert with them from engaging in any employment practice or policy, or in denying United States Consititutional guarantees to/or which discriminates against any employee or citizen on the basis of color, race, religion or national origin.

(d) Enter a Judgement against defendant's in favor of Plaintiff awarding Plaintiff compensatory damages, making Plaintiff whole for the loss of Salary caused by defendants STEINBERGER, NAPS, DARROW, BERGSTROM discriminatory and tortuous treatment of Plaintiff.

(e) Enter a Judgement against defendants ALSTON, SINAGLIA, POTTER, SMITH, RODNER, MUSICANT, DEGNAN, VAN NESS and RODRIGUEZ for violating State Statutes and denying Plaintiff Equal-Rights, Equal-Protection and Due Process.

(f) In as much as Plaintiff has suffered from defendants' employment practices and Constitutional violations, wrongful acts of discrimination and Civil-Rights Denial

and Conspiracy, and has undergone mental distress through and as a result of the foregoing and aforementioned acts grant damages for RELIEF of (One hundred fifty thousand dollars) $150,000 for Compensatory Damages of (One million five hundred thousand dollars) $1,500,000 for Punitive Damages; of (One million six hundred thousand dollars) $1,600,000 for Exemplary Damages; of (One million five hundred thousand dollars) $1,500,000 for Torts, libel, slander, defamation, and malicious character assassination for Plaintiff's Reputation in being physically barred from defending himself in unmerited Discrimination Complaint(s) as a named Respondent and from losing Federal Jurisdictional-Dismissal as a result of State Action in refusing to accept a Discrimination Complaint.

(g) Grant Plaintiff a permanent injunction and enjoining defendants, their officers agents and employees from denying

Plaintiff equal rights and services of the Public Advocate, the Commission on Investigation and the Attorney General of New Jersey that are and have been given to other citizens based on color/race/ religion.

(h) Grant damages also in such amount as is just and commensurate with the wrong and defendant's ability to pay and such additional relief as the Court deems proper.

(i) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable Law and require Defendants' to file such reports as the Court deems necessary.

PLAINTIFF DEMANDS A JURY TRIAL AS TO ALL ISSUES SO TRIABLE IN THIS ACTION and/or [the CONVENING of A THREE JUDGE COURT at the discretion and jurisdiction of the Court].

NOV. 11, 1978

EUGENE S. NEUFELD, Pro Se
200 W. 86 St., Apt 7G
New York, NY 10024
U.S.A.
(212) EN-2-5755

VERIFICATION

State of New York - - -

Nov. 11, 1978

County of New York - - -

Eugene S. Neufeld, being duly sworn, deposes and says that he resides at 200 W. 86 Street, New York, NY; that he is the Plaintiff herein; and that he has composed, prepared, written and read the foregoing complaint and knows the contents thereof and that the same are true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

Eugene S Neufeld 11-13-78

NOTORIZED

RELEVANT FEDERAL CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTION OF THE UNITED STATES

SUITS AGAINST STATES

ELEVENTH AMENDMENT

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

THIRTEENTH AMENDMENT

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV.

SECTION. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATUTORY PROVISIONS INVOLVED

Title 42 U.S.C. §1981 provides:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1983 provides as follows:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

42 USCS § 1985

§ 1985. Conspiracy to interfere with civil rights

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the

laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privilages. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 USCS § 1986

§ 1986. Action for neglect to prevent conspiracy

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USCS § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action, and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

Title 42 U.S.C. §2000d provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 USCS § 2000e-3

§ 2000e-3. Other unlawful employment practices

(a) Discrimination on account of opposition to unlawful practices or participation in investigation, proceeding, or hearing. It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title [42 USCS §§ 2000e–2000e-17], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title [42 USCS §§ 2000e–2000e-17].

28 USCS § 2201

§ 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 [26 USCS § 7428], any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 USCS § 2202

§ 2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

The New Jersey Law Against Discrimination
(N.J.S.A. 10:5-1 *et seq.*)

10:5-12. Unlawful employment practice or unlawful discrimination

It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination:

a. For an employer, because of the race, creed, color, national origin, ancestry, age, marital status, or sex of any individual or because of the liability for service in the Armed Forces of the United States, or the nationality of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment; provided, however, it shall not be an unlawful employment practice to refuse to accept for employment an applicant who has received a notice of induction or orders to report for active duty in the armed forces; provided further that nothing herein contained shall be construed to bar an employer from refusing to accept for employment any person on the basis of sex in those certain circumstances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise; *provided further that it shall not be an unlawful employment practice for a club exclusively social or fraternal to use club membership as a uniform qualification for employment, or for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or organization, or in following the tenets of its religion in establishing and utilizing criteria for employment of an employee.*

b. For a labor organization, because of the race, creed, color, national origin, ancestry, age, marital status or sex of any individual, or because of the liability for service in the Armed Forces of the United States, of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members, against any applicant for, or individual included in, any apprentice or other training program or against any employer or any individual employed by an employer; provided, however, that nothing herein contained shall be construed to bar a labor organization from excluding from its apprentice or other training programs any person on the basis of sex in those certain circumstances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of the particular apprentice or other training program.

c. For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, age, marital status or sex or liability of any applicant for employment for service in the Armed Forces of the United States, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

d. For any person to take reprisals against any person because he has opposed any practices or acts forbidden under this act or because he has filed a complaint, testified or assisted in any proceeding under this act.

e. For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.

GENERAL INFORMATION

1. How long has New Jersey's Law Against Discrimination been in effect?

The original statute became law in April, 1945, and was formerly section N.J.S.A. 18-25-1. It was renumbered in 1968 to N.J.S.A. 10:5-1.

2. Who can file a complaint under the Law?

Any person claiming to be aggrieved by an unlawful employment practice of unlawful discrimination may sign and file a bona fide complaint, setting forth therein the particulars of the employment practice or discrimination which is alleged to be unlawful. In addition, the Commissioner of Labor and Industry, the Attorney General, the Director of the Division on Civil Rights, or the Commissioner of Education may file a complaint. Further, groups or associations dedicated to the elimination of discrimination may also file.

TITLE 13

Subtitle C. Division on Civil Rights

Chapter 4. Rules of Practice and Procedure

Subchapter 1. General Provisions

13:4-1.1 Scope of Rules

The following rules shall constitute the practice and procedure and shall govern all proceedings in the Division on Civil Rights.

13:4-1.2 Liberal Construction of Provisions

(a) These rules shall be liberally construed by the Director to permit the Division on Civil Rights to discharge its statutory functions and to secure just and expeditious determinations of all matters before the Division on Civil Rights.

(b) The Director may, upon notice to all parties, in the interest of justice, relax the application of these rules.

Subchapter 3. Commencement of Action

13:4-3.1 Manner Actions Commenced

Any action may be commenced by the filing of a verified complaint at the offices or with any official or Field Representative of the Division.

13:4-3.2 Number of Complaints Filed

(a) The Division shall aid the complainant in the completion of the complaint except where aid is refused by the complainant or where the complainant appears at an office of the Division or before an officer of the Division with a completed complaint.

(b) Any person filing a complaint with the Division may file by submitting a single copy.

(c) If the complainant does not file at least two additional copies of the complaint and additional copies for each of the respondents, the Division shall duplicate enough copies of the complaint to insure the presence of the requisite number of copies.

13:4-3.3 Manner of Filing Complaints

(a) A complaint shall be deemed filed on the date it is received in any office of the Division, as defined in section 1.4 ("Definitions" of this Chapter) or on the date it is received by any official or Field Representative of the Division.

(b) All other pleadings shall be filed in any office of the Division.

(c) The filing of a complaint or any other pleading shall be proven by the official stamp of the Division or by the signature of any official, employee or Field Representative and his written notation indicating the date of receipt.

13:4-3.5 Contents of Complaint

The complaint shall set forth in separate numbered paragraphs the following:

(a) The full name and address of all complainants;

(b) The full name and address of all respondents, if known;

(c) A statement of whether the race, creed, color, national origin, ancestry, marital status, sex, military status or age of the complainant gave rise to the alleged discrimination;

(d) A brief statement setting forth the facts deemed to constitute the alleged discrimination;

(e) The section of the Law Against Discrimination allegedly violated;

(f) A statement giving all pertinent facts as to whether any other action, either criminal or civil, has been instituted in the matter;

(g) Notarized signature and verification by the person or persons filing the complaint.

13:4-3.6 Service of Complaints

The Division shall serve a copy of the complaint upon each of the respondents by registered or certified mail, return receipt requested, or by any other means provided by Rule 4:4-4 governing the New Jersey Courts.

13:4-4.3 Rights of Parties; Notification of Settlement

(a) All aggrieved persons enumerated in section 4.1 ("Aggrieved persons" and 4.2 "State Officials Who May File" of this Chapter) shall be considered parties to any proceeding in the Division resulting from the filing of a complaint by such aggrieved persons, shall have all the rights of parties as enumerated by these rules and by the Law Against Discrimination.

(b) If any complaint enumerated in 4.1 and 4.2 (as defined in subsection (a) of this section) files a complaint with the Division, the proceeding initiated by such complaint shall, if the Director finds the continuation of the proceeding is in the public interest, proceed to conclusion, including the issuance of any lawful order by the Director, even if the grievances of any individual person represented by the above aggrieved persons have been satisfactorily ameliorated.

(c) All complainants shall be notified of any settlement of individual grievances and of the right to file a motion urging the Director to continue the proceeding.

(d) The Director shall continue the proceeding on his own motion if he deems such action to be in the public interest.

Excerpts* from "Greenberg's" et.al Brief

At Page 1. "At no time did Greeberg, Margolis and Ziegler or Miss Schaffer state that they represented anyone but CompuScan, Inc."

At Page 12. "Naturally, Greeberg, Margolis and Ziegler, Esqs. cannot represent anyone without their consent."

At Page 13. "There were never any papers filed which stated that Mr. Neufeld himself was being represented."

At Page 14. "At no time was it ever stated, either orally or in writing, that any action of Greeberg, Margolis, and Ziegler or Marguerite M. Schaffer was taken on behalf of Eugene S. Neufeld."

Filed Jan 3.1979

*(Submitted on behalf of CompuScan, Greenberg, et.al. Filed on January 3, 1979 @ NR.No.18 of the Docket Sheets for C.A.78-2483, D.C. New Jersey)

Extract* of Oral Argument of A.S.Kramer, Esq.

(Greenberg, et.al)

"He was --- defended whether with his knowledge or not."

"Our law firm, as I say, defended him. --- not anything hidden from him."

"And those answers filed on his behalf --- without his knowledge, I'll give you that, ---."

"We didn't go contrary to his interest ---."

"We didn't ignore his opinions ---."

"He played no active part in the investigation of the two discrimination complaints, Cobb and Lee."

"We took his view of the employees--."

Received for information of the Court
Jan 18, 1983

*Before the Third Circuit July 23, 1982 @ No.186 of the tape of C.A.80-1987, on behalf of CompuScan, Greenberg, et.al. By Denise D. Phillips, R.P.R. of McKinley Wise & Associates, Inc. Registered Professional Reporters. pg.15-20.

PAGES A-251-A-253 LEFT OUT INTENTIONALLY

A-333

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2986-78

PATRICIA SOOS,

Appellant,

v.

CITY OF PERTH AMBOY and
THE DIVISION ON CIVIL RIGHTS,

Respondents.

Submitted April 14, 1980 - Decided

Before Judges Biscoff and Botter.

On appeal from the Division on Civil Rights.

Bernard-Paul Sypniewski, attorney for appellant.

Eugene L. Goceljack, attorney for respondent City of Perth Amboy.

John J. Degnan, Attorney General of New Jersey, attorney for respondent Division on Civil Rights (Erminie L. Conley,

Assistant Attorney General, of counsel; Katherine L. Suga, Deputy Attorney General, on the brief).

PER CURIAM

This is an appeal from a decision of the Division on Civil Rights refusing "to take jurisdiction" over a verified complaint filed by appellant Patricia Soos in which she alleged (A-334) sex discrimination on the part of her former employer the City of Perth Amboy.

The city hired appellant under the CETA program as a sanitary inspector. After several months on the job, appellant wrote to the Division complaining that she had been discriminated against on the basis of her sex since, after she was hired, the city hired two less qualified male inspectors who earned an equal or greater salary. The Division

conducted an investigation and on April 4, 1978 by letter requested more information from appellant which was never furnished. Prior to April 4, 1978, appellant had filed a verified complaint and, in the letter from the Division on that date, appellant was advised that it did not have jurisdiction over her complaint. By letter dated April 9, 1979 appellant was again advised by the Division that:

> [T]he Division on Civil Rights did not take jurisdiction over your complaint because you did not state sufficient information to support a complaint of unlawful sex discrimination against your former employer, the City of Perth Amboy.

On this appeal appellant contends that the Division was compelled by

statute to permit her to file a verified complaint and that it was error to dispose of her claim on its merits prior to the filing of the verified complaint.

It is unlawful for an employer to discriminate against an employee on the basis of sex, N.J.S.A. 10:5-12(a), and unequal pay for equal work is a violation of the Law Against Discrimination. Docker v. Bd. of Ed., City of Elizabeth, 153 N.J. Super. 470 (A-335) (App. Div. 1977), certif. den. 75 N.J. 612 (1978). The Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the regulations promulgated thereunder pursuant to N.J.S.A. 10:5-8(g) provide that the proper procedure to obtain relief from unlawful discrimination is to file a verified complaint with the Attorney

General stating the details of the alleged unlawful employment practice or unlawful discrimination. N.J.S.A. 10:5-13; N.J.A.C. 13:4-4.1. Moreover, the Division is directed to aid a complainant in the completion of the complaint. N.JA.A.C 13:4-3.2. In Hinfey v. Matawan Regional Board of Education, 77 N.J. 514 (1978), the Supreme Court emphasized the mandatory nature of the statutory duty imposed upon the Division to "receive, investigate and act upon complaints alleging discrimination because of sex" and the imperative obligation imposed on the Division to promptly investigate any complaint alleging unlawful discrimination; and, if probable cause is found, to immediately endeavor to eliminate the

unlawful discrimination. Id. at 530. N.J.S.A. 10:5-8(a); N.J.S.A. 10:5-13; N.J.S.A. 10:5-14.

In light of these statutes and regulations we find wholly unpersuasive respondents' argument that the Division has the discretion to refuse to accept verified complaints. While we are sensitive to the Division's argument that its limited resources require that it be accorded a degree of flexibility in carrying out its statutory mandate to eliminate discrimination, the Division cannot ignore the requirements of the applicable statutes and regulations. The proper time to eliminate meritless charges of discrimination is after the complaint has been filed and its allegations investigated. (A-336) In such

circumstances the Division may issue a finding of no probable cause, N.J.A.C. 13:4-6.1, which constitutes a final order, N.J.A.C. 13:4-15.3, and need not be preceded by a hearing. Sprague v. Glassboro State College, 161 N.J. Super. 218, 225-227 (App. Div. 1978).

It was error for the Division to refuse "to take jurisdiction" over appellant's verified complaint. We reverse the decision of the Division on Civil Rights refusing to accept jurisdiction over appellant's verified complaint and direct the Division to accept the complaint for filing. We further direct that the complaint be investigated and processed pursuant to the applicable statutes and regulations.

Reversed and remanded. We do not retain jurisdiction.

Office-Supreme Court, U.S.
FILED
APR 13 1983
ALEXANDER L. STEVAS,
CLERK

NO. 82-1534

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

EUGENE S. NEUFELD,

Petitioner,

v.

BRUCE BAMBROUGH, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENTS WARREN E. SMITH, JOHN J. DEGNAN, VERNON N. POTTER, C.Y. ALSTON, JOSEPH H. RODRIGUEZ, JAMES SINCAGLIA, JUDITH E. RODNER AND JUDITH S. MUSICANT OPPOSING PETITION FOR CERTIORARI

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NO. 82-1534

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

EUGENE S. NEUFELD,

Petitioner,

v.

BRUCE BAMBROUGH, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENTS WARREN E. SMITH, JOHN J. DEGNAN, VERNON N. POTTER, C.Y. ALSTON, JOSEPH H. RODRIGUEZ, JAMES SINCAGLIA, JUDITH E. RODNER AND JUDITH S. MUSICANT OPPOSING PETITION FOR CERTIORARI

Counterstatement of the Case

Petitioner, seeking a writ of *certiorari* in this Court, claims that he was the victim of a virtual conspiracy by the federal courts to deny him a fair hearing on his

claims against the respondents. The history of this case clearly reveals, however, that petitioner's claims received fair and thorough consideration and were properly dismissed for lack of merit. This case presents no legal issues which warrant consideration by this Court.

Petitioner filed a complaint in the United States District Court for the District of New Jersey on October 17, 1978, and filed an amended complaint on November 14, 1978 (Pa164). The amended complaint named 31 defendants and alleged violations of 42 U.S.C. §§1981, 1983, 1985 and 1986, 42 U.S.C. §2000e-1 *et seq.* (Title VII), 42 U.S.C. §2000d (Title VI),* the Fourteenth Amendment to the United States Constitution, and various pendant claims alleged to be grounded in state law. Petitioner alleged that his employer Compuscan and its officers required him to treat black employees more leniently than white employees and fired him from his position as a quality control manager because two black employees of the company had filed discrimination complaints against Compuscan and petitioner. The complaint also named the Chase Manhattan Bank, the United Jersey Bank, the Bessemer Securities Corporation, and the Compagnie Participations et d'Investissements Holdings S.A., all of which allegedly had financial ties to Compuscan, as well as numerous state officials whom petitioner had contacted or attempted to contact regarding his civil rights claims.

The state defendants include the following: 1) John J. Degnan, Esq., former Attorney General of New Jersey; 2) Warren E. Smith, former Director of the New Jersey Division on Civil Rights; 3) Vernon N. Potter, who was

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* Title VI was mentioned in the Introduction, Jurisdictional Statement and Administrative Procedural Requirement sections of the complaint, but no facts were stated in the complaint regarding this claim (Pa167, Pa169 and Pa181).

Mr. Smith's predecessor as Director of the Division; 4) Judith E. Rodner, a former Deputy Attorney General; 5) Judith S. Musicant, former Deputy Director of the Division on Civil Rights; 6) James Sincaglia, Bureau Chief of the Division on Civil Rights; 7) C.Y. Alston, Branch Manager of the Division on Civil Rights; and 8) Joseph H. Rodriguez, former Chairman of the State Commission of Investigation.*

Petitioner's amended complaint alleged that on February 17, 1978, he went to the Paterson office of the Division on Civil Rights to file a complaint of "Discrimination and Retaliation" (Pa205). Petitioner alleged that he brought with him to the Division a complaint prepared by the American Jewish Congress, which he wished to submit to the Division (Pa205).** Branch Manager C.Y. Alston refused to allow petitioner to file the complaint because he determined that it was untimely (Ra1). Petitioner's amended complaint further alleged that four days later on February 21, 1978, he contacted Division Bureau Chief James Sincaglia, requesting a copy of a complaint filed by a black employee against Compuscan and petitioner. Although petitioner admits that Sincaglia sent him the re-

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* Stanley Van Ness, formerly Public Advocate of New Jersey, was also named in the complaint. The Public Advocate is represented in this matter by separate counsel. Following the resignation of Mr. Van Ness in 1982, Mr. Rodriguez was appointed as Public Advocate.

** This "complaint" (Ra3) clearly indicates that petitioner was fired by Compuscan on August 19, 1978, which was 182 days before petitioner attempted to file his complaint with the Division. Mr. Neufeld confirmed this date at the hearing before Magistrate Perretti (Pa138). The New Jersey Law Against Discrimination, N.J.S.A. 10:5-18, requires that all complaints be filed within 180 days of the alleged act of discrimination. Consequently the complaint was untimely.

quested material, he alleges that Sincaglia refused to aid him in intervening in the case.*

Petitioner's complaint further alleged that Deputy Attorney General Judith Rodner "cosmetically" answered a letter which he wrote to her (Pa214), and alleged generally that Deputy Attorney General Rodner, Deputy Director Musicant and Director Potter failed to provide helpful responses to petitioner's inquiries (Pa216). Petitioner accused Attorney General Degnan of failing to answer his telephone calls (Pa217) and of failing to "enforce any form of punishment to gross violators" (Pa218).** Finally, the complaint alleged that the Public Advocate and the Chairman of the State Commission of Invesigation refused petitioner's requests that they take legal action against the Division on Civil Rights for refusing to file petitioner's civil rights complaint (Pa209 to Pa213).

The defendants-respondents filed motions to dismiss the complaint, and the motions were referred to United States Magistrate Serena Perretti, who heard argument on the motions on February 13, 1979 (Pa72). After hearing argument, Magistrate Perretti gave the defendants, some of whom had not been served with petitioner's brief and appendix in opposition to the motions (Pa117, Pa119), an opportunity to file briefs, and gave petitioner an oppor-

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* Two black employees, Marguerite Lee and Darryl Cobb, did file complaints of racial discrimination against Compuscan and Neufeld. Although petitioner complains that the Division did not serve him with the complaints (Pb21 to Pb22) it is undisputed that the Lee complaint was withdrawn and the Cobb complaint was dismissed for lack of prosecution (Ra5 to Ra10).

** The amended complaint did not name the Division on Civil Rights as a defendant.

tunity to file reply briefs (Pa119, Pa122, Pa153, Pa155).* Both before and after the hearing, petitioner submitted to the Magistrate affidavits and other materials outside the pleadings (Pa59, Pa63, Pa4). By his affidavit filed with the Magistrate on July 31, 1979, petitioner, indicating his familiarity with Fed.R.Civ.Pro. 12(b)(6), 12(c) and 56, sought leave to submit still more affidavits and documents in the event that the motions were to be treated as motions for summary judgment (Pa69).

On January 14, 1980, Magistrate Perretti filed an 18 page Report and Recommendation in which she determined that summary judgment should be granted in favor of all defendants (Pa6, Pa43). With respect to the state defendants, the Magistrate reasoned that the Eleventh Amendment barred the suit against the state defendants in their official capacity, since any damages assessed would be paid from the public treasury (Pa33). Attorney General Degnan, Chairman Rodriguez, and Public Advocate Van Ness were held immune from suit under the doctrine of prosecutorial immunity (Pa34). Summary judgment in favor of Smith, Potter, Sincaglia, Musicant and Rodner was granted because none of them were directly involved in denying any right to petitioner and the doctrine of *respondeat superior* is inapplicable in §1983 actions (Pa35 to Pa38).**

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* Petitioner has misquoted the Magistrate at Pb6, n.3, by omitting that portion of the Magistrate's remarks in which she directed Deputy Attorney General Gorrell to file a supplemental brief on the issue of immunity so that petitioner would have an opportunity to respond to his arguments on that issue (Pa104).

** As the Magistrate noted, defendants Musicant, Rodner and Potter were only charged with answering petitioner's letters "and their obvious efforts to provide courteous responses have been twisted into a reflection of an international plot against Neufeld" (Pa36 to Pa37).

Finally, it was recommended that the complaint against Alston be dismissed because petitioner was not denied any federally protected right by the Branch Manager's failure to file his complaint or to serve him with the Lee and Cobb complaints (Pa42).

After requesting and receiving an extension of time to file exceptions to the Magistrate's report, petitioner filed objections to the entire report without stating specific reasons for the objections other than the Magistrate's failure to notify him that the motions to dismiss would be treated as motions for summary judgment (Pa53 to Pa57). On February 28, 1980, Judge Meanor issued a Memorandum Order indicating that after consideration of the "voluminous" materials submitted by petitioner to the Magistrate, the Magistrate's Report, and petitioner's objections, he adopted the Report and Recommendation of Magistrate Perretti and granted summary judgment in favor of defendants (Pa3 to Pa5).

Petitioner appealed Judge Meanor's decision to the United States Court of Appeals for the Third Circuit, which affirmed the judgment of the District Court on August 4, 1982 (Pa1). Petitioner then filed a petition for *certiorari*. This brief opposes that petition.

ARGUMENT

The United States Court of Appeals properly affirmed the decision of the District Court granting summary judgment in favor of all defendants, and no important issue of federal law having been presented, this Court should deny the petition for certiorari.

Although petitioner contends that the District Court and the Court of Appeals, as well as the respondents, have all conspired to deprive him of due process of law, it is clear that petitioner was treated fairly and that his legal arguments are without substance.

Petitioner filed a 37 page amended complaint in the District Court naming 31 defendants and including such allegations as a claim that his employer Compuscan fired him due to fear that black employees would file civil rights complaints against the company, an accusation that a deputy attorney general "cosmetically" answered a letter from petitioner, and a claim that that the Chase Manhattan Bank wrongfully entered into a security agreement with Compuscan. Both before and after the hearing on defendants' motions to dismiss the complaint, petitioner filed numerous affidavits and other documents in support of his claims and in opposition to the motions to dismiss (Pa4, Pa63 to Pa64, Pa98, Pa145, Pa158).* After hearing oral argument on the motions, and after permitting defendants to submit additional briefs and

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* Contrary to his claim that he was unaware that the motions to dismiss would be converted to motions for summary judgment, petitioner's own affidavit to Magistrate Perretti clearly demonstrates his familiarity with Fed.R.Civ.P. 12(b)(6), 12(c) and 56 and with the likelihood that the motions would be converted (Pa69). Petitioner thus sought permission to submit further affidavits and documents in opposition to defendants' motions.

granting petitioner additional time to respond to those briefs (Pa104, Pa119, Pa153 to Pa154), Magistrate Perretti issued a detailed 18 page Report and Recommendation (Pa6) which drew all inferences in petitioner's favor and nonetheless recommended that summary judgment be entered in favor of all defendants (Pa44).

Although petitioner was granted an extension of time to submit objections to the Magistrate's report, the document which he eventually filed with the District Court failed to state reasons for his objections to the report, in clear disregard of Local Rules 40(A)(11)(a). Rather, petitioner simply objected generally to the entire 18 page report and requested still more time "to file a more complete and proper OBJECTION" (Pa54).* Having failed to submit specific objections to the Magistrate's report, as required by Local Rules 40(A)(11)(a), petitioner was not entitled to *de novo* review of the report, pursuant to 28 U.S.C. §636(b)(1) which requires *de novo* review only where timely objections are filed "as provided by rules of court." See *United States* v. *Raddatz,* 447 U.S. 667 (1980) (Congress intended that trial judge give *de novo* consideration to issues on which specific objections were made); See also *Pendleton* v. *Rumsfeld,* 628 F.2d 102, 106 (D.C. Cir. 1980); *Orpiano* v. *Johnson,* 687 F.2d 44, 47 (4th Cir. 1982).

Moreover, notwithstanding the inadequacy of petitioner's objections, Judge Meanor clearly engaged in a *de*

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* Petitioner's only specific objection to the report was that he had not been notified that the motions to dismiss would be treated as motions for summary judgment (Pa54). As noted *supra,* this contention was frivolous. Moreover, Judge Meanor specifically determined after review of petitioner's extensive submissions that petitioner had been given sufficient opportunity to submit materials in opposition to the motions (Pa4).

novo review of the record in rendering his decision. He indicated in his decision that he had considered "the voluminous material submitted by plaintiff" (Pa4) and noted that plaintiff's submissions extended "far beyond even the wide-ranging allegations of his pleadings" (Pa4). Obviously, the judge could only have reached that conclusion after reviewing the record. Judge Meanor's consideration of the Magistrate's report, petitioner's objections thereto, and the record developed before the Magistrate was all that was required for *de novo* review. *United States* v. *Miller*, 609 F.2d 336, 340 (8th Cir. 1979). As this Court has held:

> It should be clear that on these dispositive motions, the statute [28 U.S.C. §636(b)(1)] calls for a *de novo* determination, not a *de novo* hearing. [*United States* v. *Raddatz*, 447 U.S. 667 (1980)].

Moreover, after his *de novo* review of the record the judge was not required to issue separate findings of fact and conclusions of law, but was free to adopt the recommended findings and conclusions of the Magistrate (see Pb16). 28 U.S.C. §636(b)(1). *United States* v. *Lieberman*, 608 F.2d 889, 901 (1st Cir. 1979) *cert. den.* 444 U.S. 1019 (1980).

In summary, far from conspiring to deprive petitioner of a fair hearing as petitioner alleges (Pa17),* both Mag-

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* The results of petitioner's alleged "survey" of orders entered by the United States District Court for the District of New Jersey are meaningless, because petitioner fails to indicate how many plaintiffs in the survey submitted objections to the Magistrate's report or how petitioner determined that *de novo* review was not granted. Moreover, given petitioner's distortion of the record in this case and the fact that he failed to submit the underlying documentation for his survey to the Court, his assertions are hardly reliable.

istrate Perretti and Judge Meanor gave petitioner ample opportunity to present his claims and gave his case careful and thorough consideration. Since Judge Meanor properly applied the rule set down by this Court in *United States* v. *Raddatz* regarding *de novo* review, this case presents no need for supervision by this Court. See Sup. Ct.R. 17. Petitioner's complaint was properly dismissed, not because the legal system was rigged against him but because his legal claims lacked merit.

Contrary to petitioner's assertions (Pb21) the Magistrate properly recommended summary judgment in favor of the state defendants because, *inter alia*, petitioner failed to show that refusal to file his civil rights complaint constituted deprivation of any right secured by the Constitution or by federal law. As this Court has plainly stated, 42 U.S.C. §1983 does not "extend . . . a right to be free of injury whenever the State may be characterized as the tortfeasor." *Paul* v. *Davis*, 424 U.S. 693, 701 (1976). Petitioner alleged that defendant Alston wrongfully refused to allow him to file a state civil rights complaint against his employer.* As Magistrate Perretti correctly noted,

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* Alston's refusal to file the state complaint did not deprive petitioner of his separate right to file a complaint with EEOC. Rather, petitioner failed to exercise that right in a timely manner, by waiting 282 days before filing with EEOC (Pa21). See 42 U.S.C. §2000e-5(e). Moreover, Alston's alleged failure to provide petitioner with copies of the Lee and Cobb complaints against Compuscan and petitioner did not result in any harm to petitioner. Both complaints were either withdrawn or dismissed by the Division. Petitioner's claim that he needed to know about these complaints in order to determine whether Compuscan had violated his statutory civil rights is frivolous. The Law Against Discrimination, N.J.S.A. 10:5-1 et seq., does not prohibit an employer from firing an employee because someone has filed a civil rights complaint against that employee. Hence, insofar as Neufeld was attempting to file with the Division a complaint alleging that he was fired because of the Lee and Cobb complaints, he failed to state a cause of action under state law.

however, there is no absolute federal right to file a state civil rights complaint (Pa42). At most, petitioner had the right not to be deprived without due process of law of the opportunity, created by state law, to file a complaint in a timely manner. *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422 (1982). The state may create time limits for the filing of discrimination complaints, and the state has no constitutional obligation to accept an untimely complaint. *Logan* v. *Zimmerman, supra,* 455 U.S. at 434, n.7. In this case, Alston determined that petitioner's complaint could not be accepted because it was untimely pursuant to N.J.S.A. 10:5-18, which requires that all complaints be filed within 180 days of the alleged act of discrimination. If petitioner believed that Alston's decision was erroneous, he had the right under state law to appeal that determination to the Appellate Division of the Superior Court of New Jersey. N.J. Court Rules 2:2-3(a)(2). Since petitioner had a right of appeal, the Division's refusal to file his complaint did not finally deprive him of any state created right without due process of law. *Logan* v. *Zimmerman Brush Co., supra; Parratt* v. *Taylor,* 451 U.S. 527, 452-453 (1981). Moreover, petitioner had a separate and independent right to file his civil rights complaint in Superior Court. N.J.S.A. 10:5-13; *Gray* v. *Serruto Builders,* 110 N.J. Super. 297, 300, 265 A.2d 404 (App. Div. 1970). Instead of exercising his right of appeal or filing an independent action, however, petitioner filed suit in federal court, improperly seeking to collaterally attack the state agency's determination. *Huffman* v. *Pursue, Ltd.,* 420 U.S. 592, 608 (1975); *Brown* v. *DeLayo,* 498 F.2d 1173, 1175 (10th Cir. 1974). As this Court has repeatedly held, 42 U.S.C. §1983 does not create a federal cause of action for every alleged deprivation of state-created rights and particularly not when state law provides adequate avenues of redress for the alleged deprivation. *Parratt* v. *Taylor, supra; Paul* v. *Davis, supra.*

Consequently, petitioner's §1983 claim was properly dismissed, because he was not deprived of any federally protected right.*

It is also clear that the Magistrate, and Judge Meanor, properly applied the doctrines of Eleventh Amendment immunity and prosecutorial immunity in dismissing petitioner's claims. The Eleventh Amendment bars suits against a State "by private parties seeking to impose a liability which must be paid from publics funds in the state treasury." *Edelman* v. *Jordan,* 415 U.S. 651, 663 (1974). Such immunity, moreover, extends to state officials sued in their official capacity, when the state "is the party in fact." *Schcuer* v. *Rhodes,* 416 U.S. 232, 238 (1974). Since petitioner's amended complaint sought damages totalling $4,750,000, an amount which clearly could not and would not be paid by the individual state defendants, it is clear that his case was essentially one to recover money from the State. Consequently, " 'the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants.' " *Edelman* v. *Jordan, supra,* 415 U.S. at 663, quoting *Ford Motor Co.* v. *Dept. of Treasury,* 323 U.S. 459, 464 (1945).

Moreover, insofar as petitioner alleged that former Attorney General Degnan and former Chairman Rodriguez

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* Moreover, petitioner's §1983 claims against Degnan, Rodner, Potter, Musicant, Smith and Sincaglia were properly dismissed because none of these defendants were shown to have been personally involved in denying petitioner any alleged right. Insofar as petitioner alleged that these defendants failed to properly supervise the activities of the Division, he stated no cause of action because §1983 liability cannot be premised on the doctrine of *respondeat superior. Rizzo* v. *Goode,* 423 U.S. 362 (1976); *Hampton* v. *Holmesburg Prison Officials,* 546 F.2d 1077 (3d Cir. 1976).

failed to take legal action against the Division on Civil Rights for refusing to file petitioner's complaint, his claims were barred by the doctrine of prosecutorial immunity. The Attorney General of New Jersey is the chief law enforcement officer of the State. N.J.S.A. 52:17B-1 *et seq.* The Chairman of the State Commission of Investigation is authorized to investigate allegations of official misconduct, N.J.S.A. 52:9M-1 *et seq.*, and to refer such investigations for prosecution, N.J.S.A. 52:9M-8. In deciding whether or not to take legal action against personnel of the Division on Civil Rights, as petitioner allegedly requested, both Degnan and Rodriguez were exercising a prosecutorial function. As this Court has recognized, officials who are responsible for exercising such prosecutorial authority are immune from suit relating to their prosecutorial functions, including the decision whether or not to initiate the prosecution of a matter. *Butz* v. *Economou,* 438 U.S. 478, 515 (1978); *Imbler* v. *Pachtman,* 424 U.S. 409 (1976). Hence, summary judgment was properly granted in favor of Degnan and Rodriguez.*

In summary, for all of the foregoing reasons, it is clear that this case presents no legal issue which requires the consideration of this Court. Petitioner's complaint was devoid of merit and most of his claims were patently frivolous. Summary judgment was properly granted. Moreover, although petitioner conceives himself to be the victim of an organized effort to deprive pro se litigants of justice, it is clear that both Magistrate Perretti and Judge

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* Although petitioner also alleged that he had a viable cause of action under Title VI, 42 U.S.C. §2000d, *et seq.*, his amended complaint was devoid of any facts which would support such a claim. Apart from asserting federal jurisdiction under Title VI, the complaint contains neither factual allegations regarding Title VI violations nor even any mention of Title VI.

Meanor gave his claims careful, fair and thorough consideration. Their rejection of petitioner's claims resulted not from inattention to petitioner's case but from the lack of legal merit in his complaint.

CONCLUSION

It is respectfully submitted that for these reasons the petition for *certiorari* should be denied.

Dated: April 11, 1983

Respectfully submitted,

IRWIN I. KIMMELMAN,
Attorney General of New Jersey,
Attorney for Respondents Warren E. Smith, John J. Degnan, Vernon N. Potter, C.Y. Alston, Joseph H. Rodriguez, James Sincaglia, Judith E. Rodner and Judith S. Musicant,
By: SUSAN L. REISNER,
Deputy Attorney General.

ANDREA M. SILKOWITZ,
Deputy Attorney General,
Of Counsel.

SUSAN L. REISNER,
Deputy Attorney General,
On the Brief.

APPENDIX A

Affidavit of Charles Y. Alston

JUDGE H. CURTIS MEANOR

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

Civil Action File No. 78-2483

EUGENE S. NEUFELD,

Plaintiff,

vs.

BRUCE BAMBROUGH, *et al.*,

Defendants.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

CHARLES Y. ALSTON, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am employed in the capacity of Branch Manager by the New Jersey Division on Civil Rights having an office located at 370 Broadway, Paterson, New Jersey.

2. Sometime in February, 1978, I received a call from a man who identified himself as a representative from the

American Jewish Congress. He advised me that he was referring a person to our agency who was fired because he refused to change an evaluation of a Black female.

3. On that same day or a subsequent day, Mr. Eugene Neufeld came to the office. I recall that day in question was a Friday because the office was having a staff meeting. The Field Representative assigned to intake on that particular day was Ms. RoxAnne Spann.

4. Shortly after Mr. Neufeld's arrival, Field Representative Spann came into the staff meeting and spoke to me about the Complaint. She advised me that she did not think that Mr. Neufeld had a case. While we were discussing the matter, we discovered that Mr. Neufeld had abruptly left the office.

5. Shortly thereafter, Mr. Neufeld returned. Prior to his return, I had instructed Field Representative Spann to take the details of the complaint and we would discuss same later.

6. Subsequently, Field Representative Spann came back into the meeting and advised me that the statute of limitations had expired on the matter. The basis for the determination was the date of discharge in relationship to the subject date. We took out a calendar, and determined that the date of incident had occurred 182 days prior to Mr. Neufeld's appearance in the office. I advised Ms. Spann to explain this to Mr. Neufeld.

7. Subsequently, I was called in to clarify the agency's position. I told Mr. Neufeld that we could not process the matter. He stated that he wanted to pursue it. I

advised him that he could go to E.E.O.C. to file, and that since they could not accept jurisdiction either, he would be free to go into court. Mr. Neufeld left the office.

CHARLES Y. ALSTON

(Sworn to December 6, 1978.)

APPENDIX B

Draft Complaint

COMPLAINT:

Numbered paragraphs

Your name and address

Full name and address of respondents

Race of complaint gave rise to alleged discrimination.

Also complainant objected to Compuscan's unequal treatment of employees under complainant because of race gave rise to alleged discrimination.

FACTS—worked for company
capacity
hired Lee
problems with Lee
action wanted to take against her
not discriminated against Lee but
apply standards apply to everybody.
Lee filed complaint
You were told fired August 19
You were effectively fired—

check for services

to September 4th, 1978.

Never notified you were a party or served any papers. Never authorized any attorney to represent you in *Lee* case or to settle.

Section of Law allegedly violated

Appendix B

Section 10:15-12(a) fired on because of your race and pending action.

(d) reprisol against you because you opposed practices of discrimination.

(e) employer and Lee aided each other, and Lee coerced Compuscan into discriminating against you.

Title VII of Civil Rights Act of 1964 on the same basis

—Statement that you have (or will) file with EEOC, otherwise no other action but—related action (*Lee* case)

—Notarized and verified.

I ———————— swear that these statements true to the best of my belief.

APPENDIX C

Lee Case Disposition Report

Margurite Lee
Complainant (s)

v.

State of New Jersey
Department of Law & Public Safety
Division on Civil Rights
Docket No. E-13297
Final Case Disposition Report

Compuscan
Respondent (s)

1. Complainant (s) (a) Margurite Lee (b)
   Address: 506 North Arlington
   City: East Orange, NJ

2. Closing letter to:
   ———Complainant X X X
   Respondent ———
   Municipal Comm ———
   ———Resp-Attny X X X
   Referral Agcy ———
   Other

3. Field Representative Assigned: Donald Ruffin FR No. 133
   Respondent (s) (a) Barbara Bergstrom, Personnel Dept.

Appendix C

Address: Compuscan, Inc.—900 Huyler Street

City: Teterboro, NJ 07608

Attorney's Name:

Address: City

How Referred E.E.O.C. TNK No. 7-1095

4. Chronology (Date of)
   a. Incident 2/14/77
   b. Docket 6/30/77
   c. Assigned 6/30/77
   d. V.C. 6/13/77
   e. F.P.C.
   f. HE's Rpt
   g. Order (ILLEGIBLE)
   h. Closing (ILLEGIBLE)
   i. Days (b to n) 283

5. Final Disposition
   (01) Hear & Order
   (02) Hear, Dism
   (03) Order & Decree
   (04) Sat Adjust
   (05) N.P.C.
   (07) Withdrawn Comp. X X X
   uncoop —— unavail —— Waived EEOC ——

Appendix C

(08) Concluded Administratively

(09) No Jurisdiction

Am't & Category—Monetary Settlem't

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS

DOCKET NO. E-13297

6. Summary of Complaint:

The Complainant charges that she was harassed by being assigned to work out of her job specs and also, have been subjected to racial remarks to which she further, charge that Caucasians were not treated in that manner.

7. Basis for Final Disposition:

The Complainant stated that she did not wish to pursue the case since she had left the job in question. Also, she stated that the Division should close the case out.

Based on this a recommendation that the case be closed as Withdrawn by Complainant.

8. Dates: Public Hearing

Hearing Examiner

Court Reporter

Appendix C

Total hours expended on case 6½ Hours.

Investigated by: Donald Ruffin Conciliated by:

Final Disposition recommended by: Donald Ruffin

Date: 2/16/78

Disposition approved by: C.Y. Alston

Date: (Illegible)

NOTE: "Data Process System Questionnaire" must be entirely completed.

APPENDIX D

Cobb Case Disposition Report

Daryl L. Cobb

Complainant (s)

v.

State of New Jersey
Department of Law & Public Safety
Division on Civil Rights

Docket No. EB62RB-13327

Final Case Disposition Report

Compuscan

Respondent (s)

1. Complainant (s) (a) Daryl L. Cobb (b)

   Address: 391 De Wolf Place

   City: Hackensack, New Jersey

2. Closing letter to:

   X X X Complainant X X X

   Respondent ———

   Municipal Comm ———

   X X X Resp Attny X X X

   Referral Agcy ———

   Other

3. Field Representative Assigned: Roxanne Spann FR No.168

   Respondent (s) (a) Compuscan (b)

Appendix D

Address: 900 Hyler Street

City: Teterboro, New Jersey

Attorney's Name: Greenberg, Margolis & Ziegler, Esqs.

Address: 100 Evergreen Place City East Orange, New Jersey 07018

How Referred E.E.O.C.

744 Broad Street TNK No. 022771235

Newark, New Jersey

4. Chronology (Date of)
   a. Incident 4/3/77
   b. Docket 7/14/77
   c. Assigned 3/17/78
   d. V.C. 7/6/77
   e. F.P.C.
   f. HE's Rpt
   g. Order
   h. Closing
   i. Days (b to h)

5. Final Disposition
   (01) Hear & Order
   (02) Hear, Dism
   (03) Order & Decree
   (04) Sat Adjust

Appendix D

(05) N.P.C.

(07) Withdrawn Comp.
uncoop —— unavail —— Waived EEOC

(08) Concluded Administratively X X X

(09) No Jurisdiction

Am't & Category—Monetary Settlem't

State of New Jersey
Department of Law & Public Safety
Division on Civil Rights

Docket No. EB62R3-13327

6. Summary of Complaint:

Complainant was hired as Quality Inspector. Complainant was to be reviewed with a possible raise after 3 months. After 3 months complainant was not reviewed or given a raise or even given any explanation. Complainant has been denied training opportunities and been asked to do menial jobs such as sweeping up and moving objects.

Complainant has reason to believe that caucasian in this department have been given raises and training. Complainant believes that he has been discriminated against because of his race. Complainant is a member of the black race.

7. Basis for Final Disposition:

On April 11, 1978 Field Representative, made an attempt to contact complainant by telephone. There was no response. And on December 12, 1977 complainant was sent a letter asking him to contact the

Division to have his case reviewed or the Division would have no choice but to conclude he was no longer interested in pursuing the matter and close his case accordingly. The complainant did not respond.

In reviewing information submitted by complainant and respondent, it was determined that case was leading to No Probable Cause. However, material facts remained in disputed. Without the complainant's availability, the disputed facts could not be resolved.

Based on the above I recommend case be closed Administratively due to the unavailability of complainant.

8. Dates: Public Hearing

   Hearing Examiner

   Court Reporter

9. Total hours expended on case 18 Hours.

   Investigated by: RoxAnne Spann Conciliated by:

   Final Disposition recommended by: RoxAnne Spann

   Date: 3/28/78

   Disposition approved by: Date:

NOTE: "Data Process System Questionnaire" must be entirely completed.

FILED
APR 21 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1534

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

EUGENE S. NEUFELD,

Petitioner

v.

BRUCE BAMBROUGH, et al.,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF RESPONDENT, STANLEY C. VAN NESS, IN OPPOSITION TO THE PETITION

JOSEPH H. RODRIGUEZ
PUBLIC ADVOCATE OF NEW JERSEY
Department of the Public Advocate
Attorney for Respondent
Stanley C. Van Ness
Richard J. Hughes Justice
Complex, CN 850
Trenton, New Jersey 08625
(609) 292-1692

VERICE M. MASON*
Assistant Deputy
Public Advocate
Of Counsel and on
the Brief

*Counsel of Record

The Copy Center, Inc., 615 Chestnut Street, Philadelphia, PA 19106 - (215) 925-1900

PARTIES IN THE COURT OF APPEALS

BRUCE BAMBROUGH, President, Compuscan, Incorporated;
WARREN E. SMITH, Director, New Jersey Division on Civil Rights;
JOHN J. DEGNAN, Individually and as Attorney General of New Jersey;
ROBERT A. LEONARD, Individually and as former President of Compuscan;
VERNON N. POTTER, Individually and as former Director, New Jersey Division on Civil Rights;
STANLEY C. VAN NESS, Individually and as the Public Advocate of New Jersey;
NORBERT STEINBERGER, Individually and as Executive Vice President of Compuscan;
C.Y. ALSTON, Individually and as BRANCH Manager, Paterson Office, New Jersey Division on Civil Rights;
JOSEPH H. RODRIGUEZ, as Chairman, Commission of Investigation, State of New Jersey;
MARVIN WEISS, Individually and as Vice President, Compuscan
JAMES SINCAGLIA, Individually and as Chief, Bureau of Enforcement, New Jersey Division on Civil Rights;
WILLIAM T. BURGIN, Individually and as Director of Compuscan;
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MARTIN BRODY, Individually and as Director, Compuscan;
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CAROL M. DARROW, Individually and as Corporate Secretary of Compuscan;

BARBARA BERGSTROM, Individually and as Personnel Manager of Compuscan;
MORGUERITE M. SCHAFFER, Individually and as Attorney for Compuscan;
GREENBERG, MARGOLIS and ZEIGLER; LEON, WEILL and MAHONEY; BESSEMER SECURITIES CORPORATION; COMPAGNIE PARTICIPATIONS et d'INVESTISSEMENTS HOLDINGS S.A. (C.P.I.H.); COMPUSCAN INCORPORATED; NEW JERSEY DIVISION ON CIVIL RIGHTS, DEPARTMENT OF LAW AND PUBLIC SAFETY;
and UNITED JERSEY BANK.

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No. 82-1534

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

EUGENE S. NEUFELD,

Petitioner

v.

BRUCE BAMBROUGH, et al.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF RESPONDENT, STANLEY C. VAN NESS, IN OPPOSITION TO THE PETITION

The respondent, Stanley C. Van Ness, former Public Advocate of the State of New Jersey,* respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the judgment of the United States Court of Appeals for the Third Circuit.

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* Respondent Stanley C. Van Ness is independently represented by the New Jersey Department of the Public Advocate. All of the other numerous state defendants in this action are represented by the Attorney General of New Jersey.

Counterstatement of the Case

Petitioner Neufeld's case concerns allegations of constitutional deprivations by respondent Stanley C. Van Ness both individually and in his former official capacity as Public Advocate of the State of New Jersey.* Petitioner asserts that respondent Van Ness and the other thirty respondents have engaged in a conspiracy to deprive him of his constitutional rights, with the federal courts ultimately denying him an appropriate hearing on these deprivations.

Petitioner filed a complaint in the United States District Court for the District of New Jersey on October 17, 1978, with an amendment filed on November 14, 1978, alleging that 31 individuals, corporations and governmental agencies had committed constitutional violations and violations of his

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* Stanley C. Van Ness formerly served as Public Advocate from 1974 to February 10, 1983, and was succeeded at that time by Joseph H. Rodriguez. Rodriguez is also a respondent in this case and is represented in his former capacity as Chairman of the State Commission on Investigation by the Attorney General of New Jersey.

civil rights under color of state law pursuant to 42 U.S.C. §1981, 1983, 1985 and 1986, 42 U.S.C. §2000e-1 et seq., 42 U.S.C. §2000d and the Fourteenth Amendment to the United States Constitution. (App164*).

As set forth in the complaint, the allegations against respondent Van Ness are as follows:

> ". . .The decision of the Public Advocate STANLEY C. VAN NESS to "not get involved" is discriminatory and similar situations challenging the Public Advocate's Decisions exist! These refusals after knowing the facts of the matter as revealed by Mr. Ray T. Falls in a letter dated October 3, 1978 "I know you intend to pursue this through FEDERAL channels and hope it will eventually be resolved to your satisfaction -- etc." clearly indicates STANLEY C. VAN NESS knew their [sic] was Jurisdiction for Constitutional violations in stating this opinion, yet VAN NESS offered no State remedy. Hence with knowledge of and as an attorney and acting as the Public Advocate under State Laws, VAN NESS refused to prevent the continuing Civil Rights Denials to Plaintiff or exert any of his powers on and for Plaintiff. The refusal to do so is alleged to be based upon arbitrary, capricious and frivolous decision making processes, for clearly the Public Advocate knew all of the issues and details from submitted documents . . ." (App209).

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* "App" refers to petitioner's appendix.

Petitioner Neufeld's initial involvement with respondent Van Ness began on June 23, 1978, when petitioner visited the Department of the Public Advocate, of which respondent is the chief executive officer, to register a complaint against the New Jersey State Division on Civil Rights. (App208). Petitioner alleged that he had attempted to file an employment discrimination complaint against his former employer, Compuscan, with the State Division on Civil Rights, but the complaint was refused. The Division on Civil Rights had determined that petitioner's complaint did not state a cause of action and that the statute of limitations for filing the complaint had tolled.

Plaintiff did not appeal this determination to the Appellate Division of the Superior Court, but instead sought the assistance of the Division of Citizen Complaints within the New Jersey Department of the Public Advocate. This office is empowered by statute, N.J.S.A. 52:27E-36, to:

> a. Receive and forward to appropriate agencies of the State for determination complaints from any citizen relating to the administrative action or inaction of agencies.

b. Investigate any complaint from any citizen relating to the administrative action or inaction of any agency, whether or not such action or inaction is final, where the complaint indicates that the action or inaction may have been:

(1) Unreasonable, unfair, oppressive or discriminatory, although in accordance with law;

(2) Unaccompanied by an adequate explanation;

(3) Performed in an inefficient manner.

Pursuant to petitioner's complaint of June 23, 1978, the Division of Citizen Complaints wrote to the Division on Civil Rights on July 1, 1978, to obtain an explanation of its refusal to accept petitioner's complaint. (App208). On July 28, 1983, petitioner wrote to the Assistant Commissioner of the Department of the Public Advocate requesting that the department file a lawsuit on his behalf through its Division of Public Interest Advocacy. The Division of Public Interest Advocacy, pursuant to N.J.S.A. 52:27E-29 et seq., may represent the public interest in any proceeding as decided by the Public Advocate. The Department of the Public Advocate wrote petitioner

and advised him that it would not initiate suit on his behalf because his case involved no significant public interest issue. Petitioner subsequently requested a reconsideration of the Public Advocate's failure to initiate litigation and was advised that this was a final decision. Petitioner did not appeal this decision to the Appellate Division of the Superior Court.

Thereafter, on October 17, 1978, the petitioner filed a lawsuit in federal district court; he alleged violation of his right to due process and equal protection of the law and sought a remedy under 42 U.S.C. §§1981, 1983 and 1985. (App208-213, App217-219, App230). Respondent Van Ness moved to dismiss petitioner's complaint. (App93-94). On February 13, 1979, arguments on the motion were heard before the Honorable Serena Perretti, United States Magistrate, to whom the matter had been referred. (App72). At the hearing, Magistrate Perretti afforded all parties the opportunity to present their positions on the issues. The magistrate established a schedule for submission of briefs by the parties,

including any reply briefs to be submitted by petitioner. (App119, App122, App153, App155).

Magistrate Perretti issued her Report and Recommendation on January 14, 1980, wherein she recommended that summary judgment be entered in favor of all defendants and against plaintiff with costs. (App6, App43). Specifically, Magistrate Perretti determined that "the complaint against all of the state defendants in their official capacities is barred by the Eleventh Amendment." (App32). With respect to the allegations against respondent Van Ness in his individual capacity, the magistrate concluded that he was immune from suit under the prosecutorial immunity doctrine. (App34).

On February 27, 1980, the Honorable H. Curtis Meanor, United States District Judge for the District of New Jersey, after considering the voluminous material submitted by plaintiff-petitioner, the Report and Recommendation of the Magistrate and plaintiff's objections thereto, entered an Order adopting the magistrate's Report and Recommendation without assessing costs. (App3).

The United States Court of Appeals for the Third Circuit subsequently affirmed the judgment of the District Court on August 4, 1982 (Appl). Petitioner now seeks a writ of certiorari seeking to reverse the Third Circuit's decision. As we will explain below, however, the petition does not present any issue worthy of this Court's attention.

REASONS FOR DENYING THE WRIT

1. CERTIORARI SHOULD BE DENIED BECAUSE THE DISTRICT COURT'S DE NOVO REVIEW OF THE MAGISTRATE'S REPORT AND RECOMMENDATION WAS IN COMPLETE ACCORD WITH THE MANDATES OF CONGRESS AND OF THIS COURT.

Respondent Van Ness adopts and joins in the argument on this issue presented in the brief by the Attorney General of New Jersey on behalf of all other respondent state officials. The Attorney General has thoroughly explained the pertinent decisions and has persuasively demonstrated why certiorari is wholly inappropriate on this issue.

2. CERTIORARI SHOULD BE DENIED BECAUSE THE DECISION THAT RESPONDENT VAN NESS IS IMMUNE FROM SUIT IN EITHER HIS OFFICIAL OR INDIVIDUAL CAPACITY IS ENTIRELY CONSISTENT WITH THIS COURT'S PRECEDENTS.

Petitioner challenges the magistrate's determination that respondent Van Ness was immunized from suit as conflicting with decisions of this Court concerning Eleventh Amendment immunity for state officials. Pb 22. Petitioner characterizes the magistrate's finding as granting a "blanket Eleventh Amendment Immunity," in conflict with this Court's decisions in Edelman v. Jordan, 415 U.S. 651 (1974); Quern v. Jordan, 440 U.S. 332 (1979), and related decisions of this Court. (App22).

Interestingly, it is upon one of these cases that the magistrate specifically relied in determining that respondent Van Ness was immune from suit in his official capacity (App33). In Edelman v. Jordan, supra, this Court held that a suit brought in federal court by private parties would be barred by the Eleventh Amendment, if it sought to impose liability which would have to be paid

from public funds in the state treasury. 415 U.S. at 633. Quern v. Jordan, supra, one of the cases cited by the magistrate as a controlling precedent (App33), reaffirmed Edelman, and held that a suit brought on 42 U.S.C. §1983 grounds does not abrogate the Eleventh Amendment immunity of the States. 440 U.S. at 345. In Quern, the Court again reviewed the distinction between a party requesting prospective relief permitted by the Eleventh Amendment and retrospective relief, which requires the payment of funds from the state treasury and is thus barred.

The decision below is not in any way in conflict with the precedents of this Court or with this Court's interpretation of the Eleventh Amendment. Petitioner's amended complaint requests retrospective relief totalling $4,750,000 in damages, a request which undeniably seeks to require payment from public funds (App238). Eleventh Amendment immunity clearly protects the state in such suits and extends to state officials sued in their official capacity if the state is the party in fact.

Scheuer v. Rhodes, 416 U.S. 232, 237 (1974). In the present case, the petitioner clearly seeks recompense from the state by requesting so large a sum in damages. Since the state is, therefore, the substantial party in interest, respondent Van Ness is entitled to invoke its immunity. Edelman, supra, 415 U.S. at 663. Thus, the reasoning below was consistent with this Court's precedents and properly held that the Eleventh Amendment required immunity for respondent Van Ness in his official capacity.

Petitioner mentions in his petition that he was denied declaratory and injunctive relief pursuant to 28 U.S.C. §2201 and §2202 (App22), alleging that the magistrate's holding of "blanket immunity" for state public officials was the reasoning behind this determination. (Pb 22). However, review of the magistrate's report reveals that the magistrate denied the requested relief after determining that immunity should be accorded respondent Van Ness in his individual capacity in light of his functions and responsibilities. (App34).

This decision was eminently correct in light of the unique responsibilities of the Public Advocate of New Jersey. The Public Advocate's statutory responsibility is to represent the public interest in New Jersey in such administrative or court proceedings that he deems shall serve the best interests of the public. N.J.S.A. 52:27E-29. The Public Advocate may either initiate or intervene in pending actions. N.J.S.A. 52:27E-32. Moreover, the New Jersey legislature gave the Public Advocate sole discretion to represent or refrain from representing the public interest in any proceeding, subject only to judicial review for arbitrariness through a direct appeal to the Appellate Division of New Jersey's Superior Court. N.J.S.A. 52:27E-31. Mount Laurel Twp. v. Department of the Public Advocate, 83 N.J. 522, 533, 416 A.2d 886, 892 (1980); Delaney v. Penza, 151 N.J. Super. 455, 458, 376 A.2d 1334, 1336 (App. Div. 1977).

The "public interest" is defined by statute as:

> an interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens.
> N.J.S.A. 52:27E-30.

The definition is expanded upon in the accompanying administrative regulations which serve to guide the Public Advocate in his evaluation of when to represent the public interest. N.J.A.C. 15A:1-1.6 discusses the decision-making process as it relates to the discretionary determination to represent the public interest:

> (a) The division may not represent the public interest without the approval of the Public Advocate. The Public Advocate shall have sole discretion to represent or refrain from representing the public interest in any proceeding.*

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* The regulations also articulate the standards the Public Advocate uses in the exercise of this broad discretion to initiate litigation. N.J.A.C. 15A:1-1.6 continues as follows:

> 1. In determining the importance of the public interest involved, the Public Advocate may consider one or all of the following:
> (Footnote continued on next page)

The Public Advocate's discretion in this regard has been challenged in state courts by individuals

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(Footnote continued from p.13)

i. Whether the issue affects the health, safety or general welfare of the citizens affected;

ii. Whether the issue concerns governmental operations at either the Federal, State, county or municiapal level which, if unresolved, will impair the quality of government services to the citizens affected; or otherwise affect the relationship of citizens to government;

iii. Whether the issue has a substantial economic impact on the citizens affected;

iv. Whether the issue has a substantial economic impact on municipal, county, State or Federal government;

v. Whether the issue may have substantial precedential value; and

vi. Whether issue otherwise substantially affects the quality of life for the citizens affected.

2. In determining the extent of the public interest involved, the Public Advocate shall consider whether the number of citizens affected in the particular action or its resolution is substantial.

(Footnote continued on next page)

whom the Public Advocate has refused to represent. Such challenges have been repeatedly rejected by

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(Footnote continued from p.14)

3. In determining whether the public interest would be adequately represented without the action of the department, the Public Advocate may consider one or all of the following:

i. Whether that interest is being fully represented by private parties; the Public Advocate may determine to become involved even if the primary parties to the dispute are represented, if such parties may not represent the full public interest in the dispute;

ii. Whether the citizens affected are members of a group, association, or political subdivision which can practically provide representation and such group representation will fully represent the public interest as well; and

iii. Whether the citizens affected have sufficient financial ability or incentive to retain competent counsel.

4. The Public Advocate may refrain from representing any public interest if it appears the cost of representation to the State substantially outweighs the public interest involved.

5. Where several public interests are involved in a single dispute or litigation, the Public Advocate may examine

(Footnote continued on next page)

New Jersey courts. See Borough of Morris Plains v. Department of the Public Advocate, 169 N.J. Super. 403, 404 A.2d 1244 (App. Div. 1979) (Public Advocate properly exercised discretion in suing 27 municipalities on the broad public interest issue of equal housing opportunities); Mount Laurel Twp. v. Department of the Public Advocate, supra (Public Advocate properly exercised discretion in denying request for reimbursement for legal expenses incurred in defense of a suit he prosecuted where representation of plaintiffs clearly served a public purpose); Delaney v. Penza, supra (Public Advocate properly exercised

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(Footnote continued from p.15)

each interest and elect to represent one interest.

6. Where there are several conflicting public interests involved in a single dispute or litigation, the Public Advocate may choose to have the division represent one interest and arrange for separate representation of the conflicting interest or interests. Alternatively, the Public Advocate may choose to refrain from representing any of the competing interests.

discretion in deciding to represent an association as plaintiffs because the pertinent statute does not restrict the Advocate's representation to individual plaintiffs); Edmond v. Department of the Public Advocate, 137 N.J. Super. 82, 347 A.2d 624 (App. Div. 1975), certif. den., 69 N.J. 455, 354 A.2d 642 (1976) (Public Advocate properly rejected request to institute action to compel the State Division of Civil Rights to reopen a case because no broad public interest issue was involved).

In this case, petitioner requested that the Public Advocate initiate a lawsuit on his behalf. The magistrate properly analogized the function performed by respondent Van Ness in such a situation to that performed by a prosecutor. A prosecutor determines whether to initiate criminal proceedings against individuals. Respondent Van Ness, similarly, has sole discretion as to whether to file a lawsuit in the public interest on petitioner's behalf. N.J.S.A. 52:27E-31. Such a function is quasi-judicial in nature, as

opposed to investigative or administrative, and this immunizes respondent from suit in accordance with Butz v. Economou, 438 U.S. 478, 515 (1978) (agency officials performing certain functions analogous to those of prosecutor can claim absolute immunity; decision to initiate proceedings is akin to the prosecutor's decision to initiate a criminal prosecution); Imbler v. Pachtman, 424 U.S. 409, 427 (1976) (prosecutor initiating prosecution and presenting the State's case is immune from a civil suit for damages under 42 U.S.C. §1983). Petitioner has not credibly argued that the magistrate's decision regarding respondent's immunity conflicts in any way with pertinent precedents of this Court.

Inasmuch as there is no conflict among circuits on the immunity issues presented by petitioner and no conflict below in lower court decisions and pertinent precedents of this Court, the petition for a writ of certiorari should be denied. No important question of national significance is presented and the decision below was

clearly correct in ruling that respondent Van Ness was immune in his individual and official capacity from suit. Additionally, little could be found in petitioner's allegations to cause them to rise to the level of a constitutional violation.

In sum, petitioner's complaint was deemed to be without merit and summary judgment was appropriately granted below. There is no basis for a grant of certiorari, or for even concluding that any alleged invasion of petitioner's constitutional rights has occurred.

CONCLUSION

For the reasons expressed herein, respondent Stanley C. Van Ness respectfully requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

JOSEPH H. RODRIGUEZ
PUBLIC ADVOCATE OF NEW JERSEY
Stanley C. Van Ness

By: Verice M. Mason
Assistant Deputy Public Advocate

Date: April 15, 1983

Office-Supreme Court, U.S.
FILED
APR 18 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1534

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

EUGENE S. NEUFELD,

Petitioner,

vs.

BRUCE BAMBROUGH, President, Compuscan, Incorporated;
WARREN E. SMITH, Director, New Jersey Division on Civil Rights;
JOHN J. DEGNAN, Individually and as Attorney General of New Jersey;
ROBERT A. LEONARD, Individually and as former President of Compuscan;
VERNON N. POTTER, Individually and as former Director, New Jersey Division on Civil Rights;
STANLEY C. VAN NESS, Individually and as the Public Advocate of New Jersey;
NORBERT STEINBERGER, Individually and as Executive Vice President of Compuscan;
C. Y. ALSTON, Individually and as Branch Manager, Paterson Office, New Jersey Division of Civil Rights;
JOSEPH H. RODRIGUEZ, As Chairman, Commission of Investigation, State of New Jersey;
MARVIN WEISS, Individually and as Vice President, Compuscan;
JAMES SINCAGLIA, Individually and as Chief, Bureau of Enforcement, New Jersey Division on Civil Rights;
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GREENBERG, MARGOLIS and ZEIGLER;
LEON, WEILL and MAHONEY;
SECURITIES CORPORATION; COMPAGNIE PARTICIPATIONS et d'INVESTMENTS HOLDINGS S.A. (C.P.I.H.); COMPUSCAN INCORPORATED; NEW JERSEY DIVISION ON CIVIL RIGHTS, DEPARTMENT OF LAW AND PUBLIC SAFETY and UNITED JERSEY BANK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT, ROBERT LEONARD'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PETER W. TILL,
Attorney for Respondent,
Robert A. Leonard.

OF COUNSEL:
ARON, TILL & SALSBERG,
694 Passaic Avenue,
Nutley, New Jersey 07110
(201) 667-3800

On the Brief
PETER W. TILL

Appellate Printing Co., Inc., (201) 753-0200

QUESTIONS PRESENTED

The petitioner provides no statement of Questions Presented for Review.

The question, if any at all—which should be properly before this Court, is whether the United States Court of Appeals for the Third Circuit properly affirmed the Order of the District Court (Pa3) [which incorporated the Magistrate's Report and Recommendation (Pa6)] dismissing the Amended Complaint—where the petitioner failed to plead any facts with respect to the respondent, Robert A. Leonard, either as an officer of the respondent, Compuscan, Inc. ("Compuscan") or, in the alternative, individually.

As will be discussed *infra*, the facts and conclusions of the petitioner are erroneous and not supported by the Memorandum Order of the United States District Court for the District of New Jersey (Pa3), Magistrate's Report and Recommendation (Pa6) and Transcript of Proceedings Before the Magistrate, February 13, 1979 (Pa72).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

EUGENE S. NEUFELD,

Petitioner,

v.

BRUCE BAMBROUGH, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT, ROBERT LEONARD'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW AND JURISDICTION

Respondent, Robert A. Leonard, concurs in petitioner's statement of the opinions below and does not question the jurisdiction of this Court.

STATUTES INVOLVED

The petitioner sets forth no contention in the Court below that the statutes it refers to were directly involved in this matter, nor any dispute over the meaning of said statutes.

COUNTER-STATEMENT OF THE FACTS AND THE CASE

This matter involves claims of constitutional violations (substantive and procedural) and claims of violations of civil rights under color of state law resulting in alleged employment discrimination, pursuant to 42 U.S.C. 1981, 1983, 1985, 1986 and 2000(d) and (e).

On June 30, 1977, Marguerite Lee, an employee of respondent, Compuscan, filed a Complaint with the State of New Jersey, Department of Law and Public Safety, Division on Civil Rights, alleging discrimination against respondents Compuscan, Norbert Steinberger and petitioner.

Ultimately, the Complaint, brought by Marguerite Lee, was administratively terminated with a finding by the Division of Civil Rights of no cause for action.

On October 17, 1978, a Complaint was filed by the petitioner with the Clerk, United States District Court, Newark, New Jersey, charging 28 individuals, corporations, and governmental agencies with discrimination against the petitioner, in conjunction with his firing from the respondent, Compuscan, on or about August 19, 1977, which Complaint was superseded by an Amended Complaint filed with the Clerk, United States District Court, Newark, New Jersey, on November 14, 1978.

On February 28, 1980, the United States District Court for the District of New Jersey entered an Order (Pa3), adopting the Magistrate's Report and Recommendation (Pa6), granting summary judgment in favor of all the respondents and against the petitioner, with costs.

Petitioner, seeking a writ of certiorari, claims that at each and every stage of the judicial proceedings

hereinbelow, his claims of constitutional violations were neither properly analyzed [by the United States District Court for the District of New Jersey (Pa3 and Pa6)] nor given serious consideration when allowed the very rare opportunity to present oral argument before the United States Court of Appeals for the Third Circuit.*

It is impossible to ignore the petitioner's "attitude." At page 3 of the Petition, the section entitled "Statement of the Case," the petitioner proceeds with a frontal assault on the Federal Judicial system instead of an appropriate analysis of the facts.

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* Rules of the United States Court of Appeals For the Third Circuit, Rule 12(6)(a) and (b) says:

(6) ORAL ARGUMENT.

(a) Oral argument shall be allowed in all cases unless the panel, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed.

Any party to the appeal shall have the right to file a statement with the Court setting forth the reasons why, in his opinion, oral argument shall be heard. Such statement shall be filed with the Clerk within seven (7) days after the filing of appellee's or respondent's brief. The request shall set forth the amount of argument time required.

Criteria for determining whether there should or should not be oral argument are:

(1) whether the appeal is frivolous; or

(2) whether the dispositive issue or set of issues has been recently authoritatively decided; or

(3) whether the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(b) *Notice of argument; postponement.* The Clerk shall advise all parties whether oral argument is to be heard, and, if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

> *There is an alarming tendency in the Federal Judicial system to relegate pro se litigants and others who bring certain kinds of disfavored claims to a perceived second class system of justice:* their cases are referred in a wholesale fashion to magistrates, who are not Article III judges, and the district judges fail to perform the sort of thorough and independent de novo review that is statutorily required by the magistrates Act, 28 U.S.C. §636 (b)(1)(B), and constitutionally mandated by Article III, see *U.S. v. Raddatz*, 447 U.S. 667 (1980) and *Wingo v. Wedding*, 418 U.S. 461 (1974). The *inadequate attention paid by judges to certain classes of litigants distorts the purpose and integrity of the judiciary* and creates a perception that the courts do not dispense justice to those disfavored groups who may most need the thoughtful attention of a fully qualified, independent Article III judge.
>
> Petitioner Neufeld is one of thousands of such *pro se* civil rights litigants who has been *railroaded* through the Article III courts without receiving adequate attention from an Article III judge. (Emphasis added)

At page 7 petitioner comments on the consideration given his "purported" constitutional claims by the district judge:

> The district judge filed an order on February 28, 1980, adopting the Magistrate's Report, 'for the reasons stated therein,' (A3). In plain contravention of his statutory and constitutional obligation to make a *de novo* determination of the magistrate's findings, the judge indicated that he had examined only the magistrate's report and the objections thereto. He did not examine the amended complaint or other pleadings, the briefs, the record, opposing

affidavits, the transcript, or records of the company submitted by petitioner or documents submitted by the State. Thus, it is evident that the judge did not perform a *de novo* record review.

Again, at page 7, referring to the United States Court of Appeals for the Third Circuit consideration of his claim and oral argument, petitioner's remarks are nothing short of insulting:

> *It was evident at the argument, however, that opportunity to present a statement was a pro forma attempt to palliate petitioner's desire to receive the attention of an Article III judge.* Almost immediately thereafter, on August 4, 1982, the Court of Appeals affirmed the lower court by judgment order, without opinion (A-1). The Court of Appeals also denied, without opinion, petitioner's motion for rehearsing (October 14, 1982 A-49). (Emphasis added).

The petitioner refuses to accept the fact that the allegations fail to rise to the level of a constitutional claim.

Petitioner's impression of the consideration given by the United States Court of Appeals for the Third Circuit demonstrates the petitioner's artificially heightened perception that he has purportedly been "railroaded," when, in fact, he has totally and indefatigibly failed to allege any facts, despite numerous opportunities to do so. Carrying petitioner's theory of being "railroaded" to its logical (or illogical) conclusion, the United States Court of Appeals for the Third Circuit could then do nothing right in the eyes of the petitioner. With respect to the petitioner's hopes, the United States Court of Appeals for the Third Circuit might well fall within the old maxim, "damned if they do and damned if they don't." For example, had the United States Court of Appeals for the

Third Circuit denied petitioner's request for oral argument, then the petitioner would argue that his rights had been denied. However, the petitioner was extended the very rare opportunity to present oral argument. Notwithstanding, the petitioner was not satisfied, as such opportunity was merely" a pro forma attempt to pallitate petitioner's desire to receive the attention of an Article III judge."

In the Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit, the petitioner omits and distorts salient facts and mischaracterizes and emasculates the Magistrate's Report and Recommendation (Pa6), the Order of the District Court (Pa3) and the Order of the United States Court of Appeals for the Third Circuit (Pa1).

The petitioner's contention that his claims did not receive adequate attention, with petitioner characterizing his treatment as being "railroaded" is without support anywhere. On the contrary, while the United States Magistrate assessed costs against the petitioner (Pa44), the United States District Court (Pa5) and United States Court of Appeals for the Third Circuit (Pa-2) entered their respective Orders without costs against the petitioner.

The petitioner's characterizations of the United States District Court and United States Court of Appeals for the Third Circuit, in connection with the scope of review given a Magistrate's Report and Recommendation and Memorandum Order of the United States District Court are grossly inaccurate. The Magistrate's Report and Recommendation and United States District Court's Memorandum Order and the affirmance by the United States Court of Appeals for the Third Circuit, speak for themselves and very simply do not say what the petitioner asserts.

ARGUMENT

Point I

This Court should deny the Petition for Certiorari as the United States Court of Appeals for the Third Circuit properly affirmed the decision of the United States District Court granting Summary Judgment and further no important issue of Federal Law has been presented.

As his reasons for seeking the grant of the writ, petitioner argues that:

(1) The District Court's failure to review all the material necessary to make a *de novo* determination conflicts with standards adopted by this court and by other Circuits, and does not comport with the Federal Magistrate Act or with Article III;

(2) Adoption of a magistrate's recommended decision without an independent *de novo* review by an Article III district judge constitutes an unlawful delegation of judicial power to a non-Article III officer;

(3) A litigant who has invoked the power of an Article III court and has not consented to reference to a magistrate has a right founded in the due process clause of the Fifth Amendment and in Article III to a *de novo* determination and opinion stating reasons for denying relief under an Article III judge;

(4) Routine non-consensual referals of *pro se* cases to magistrates for depositions that effectively are final violates the due process clause of the Fifth Amendment and Article III; and

(5) State officials are not immunized from liability for acting contrary to antidiscrimination statutes by virtue of the Eleventh Amendment.

Petitioner's arguments 1 through 4 are addressed to the petitioner's contention that he is entitled to *de novo* review, See *United States v. Raddatz*, 447 U.S. 667, 100 S. Ct. 2406, 65 L.Ed. 2d 424 (1980); *Pendleton v. Rumsfeld*, 628 F.2d 102, 106 (D.C. Cir. 1980); *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982), which, according to the petitioner, means that the District Court Judge is required to undertake and conduct a *de novo* hearing. That is simply not the state of the law. In *United States v. Miller* 609 F.2d 336, 340 (8th Cir. 1979), the Court said:

> It should be clear that on these dispositive motions, the statute [28 U.S.C. §636 (b) (1)] calls for a *de novo* determination, not a *de novo* hearing. [*United States v. Raddatz* 447 U.S. 667, 674, 100 S. Ct. 2406, 65 L.Ed.2d 424 (1980)].

De novo determination does not mean a *de novo* hearing at which the United States District Court must rehear the evidence. *National R.R. Passenger Corp. v. Koch Industries, Inc.*, 701 F.2d 108 (10th Cir. 1983).

It is crystal clear that the United States District Court afforded the petitioner every possible opportunity to be heard, to respond and to thereafter make submissions once again.

There is further no question that the Memorandum Order (Pa3) was not a pro forma exercise, but rather was carefully considered over a long period of time and only signed after careful consideration and review of the voluminous briefs, appendices and affidavits filed by the petitioner (Pa4-9 to 11). Again the United States District

Court takes particular note (Pa4-17 to 19) with respect to their "considering the voluminous material submitted by plaintiff and considered by Judge Perretti, . . ."

The petitioner has mischaracterized the conduct of the United States District Court. Their review of the matter hereinbelow constituted an independent *de novo* review by an Article III Judge.

Point II

The petitioner refuses to address his failure to plead any involvement of the respondent, Robert A. Leonard, whatsoever, and for good reason—were the petitioner to do so, this Court could then only come to one conclusion—that the dismissal of the Amended Complaint against the respondent, Robert A. Leonard, was properly affirmed.

The Amended Complaint (Pa164) refers to the respondent, Leonard, in four separate paragraphs:

> 8. Defendant, ROBERT A. LEONARD (individually), is the former Chairman and President of CompuScan, and is now a Consultant to CompuScan, Incorporated. (Pa172).
>
> 94. In June, 1977, ROBERT A.LEONARD, resigned, but remained on as a Consultant, to the Company. After this period, difficult times appeared. The Company experienced over a $7,000,000 loss in 1977 and a great reduction in sales. The long term debt is also $7,000,000 and prediction of future trends unreliable. What was predicted as a $3,500,000 yearly loss in May, 1978 became a $7,000,000 loss by August, 1978 and unknown factors still remain, concerning 1977 operations! (Pa220) (Pa87-6 to 13; Pa124-9 to 20).

98. AS AND FOR A FIRST CAUSE OF ACTION—Plaintiff repeats and realleges each and every allegation contained in paragraphs marked "52" through "62" of this complaint with the same force and effect as if set forth at length herein. Defendants CompuScan, BAMBROUGH, LEONARD, STEINBERGER, WEISS, NAPS, FRANK, DARROW and BERGSTROM provided special and different employment treatment at CompuScan based on color/race which included disparate discipline, fringe benefits, performance reviews, opportunity to transfer, immunity from dismissal and pay raises based upon color/race. Plaintiff opposed these unlawful practices and was dismissed in retaliation. By these and other acts Defendants discriminated against Plaintiff in violation of §704 (a) of 42 U.S.C. 2000e-2eal. Civil Rights Act 1964 Title VII *"color-race."* (Pa224).

99. AS AND FOR A SECOND CAUSE OF ACTION—Plaintiff repeats and realleges each and every allegation contained in paragraphs marked "61 through 64" of this Complaint with the same force and effect as if set forth at length herein. Defendants CompuScan, BAMBROUGH, LEONARD, STEINBERGER, WEISS, NAPS, FRANK, DARROW AND BERGSTROM provided special and different employment treatment at CompuScan based upon national origin such as opportunity, advancement and salary increases. Plaintiff treated employees equal and opposed these unlawful practices and was dismissed in retaliation. By these and other acts Defendants discriminated against Plaintiff in violation of §704(b) and §703(a) of 42 U.S.C. 2000 et seq. Civil Rights Act of 1964 Title VII—*"national origin."* (Pa225) (Pa87-6 to 13; Pa124-9 to 20).

The paragraphs, as set forth hereinabove, are the only references to the respondent, Leonard, in the Amended Complaint (Pa164).

The Magistrate's Report and Recommendation (Pa6) commented on the above paragraphs of the Amended Complaint (Pa164) as follows:

> *The Defendants.*
>
> There are 3 general classifications into which the named defendants may be grouped: (1) plaintiff's former employer, Compuscan, and persons connected with Compuscan; (2) companies or persons with whom Compuscan did business; (3) state employees or officials sued both individually and in their official capacities.
>
> *Group 1:*
>
> Reading the complaint with as broad an interpretation as possible regarding the Compuscan group, plaintiff appears to claim that Steinberger instructed him to treat black employees more leniently than non-blacks, and when he sought the aid of Darrow Bergstrom and Naps they failed to correct the situation. As a result of plaintiff's obligations to this unlawful company policy, he was fired in retaliation. Other Compuscan people are also as defendants: Bambrough, president; Leonard, former president; Weiss, vice-president; Frank, vice-president/treasurer; and directors Burgin, Brody, Bailleul, Allen, Olney and Millman. Other than mentioning these defendants in the caption, the complaint makes no reference to them except to allege in conclusory tests that they discriminated against plaintiff. The complaint clearly fails to state a claim against these ten defendants upon which relief can be granted.

The Petitioner has failed, even with the filing of an Amended Complaint (Pa164), to allege that the respondent, Leonard, abrogated his rights under 42 U.S.C. 1981, 1983, 1985, 1986, and 2000(d) and (e).

The Amended Complaint (Pa164) further fails to allege that such conduct may have arisen in respondent, Leonard's personal or official capacity.

It is further without dispute that such conduct took place only after the respondent, Leonard, was no longer associated with the respondent, Compuscan.

Even had the petitioner attempted to make a claim against the respondent, Leonard, on the theory of *respondeat superior*, the Amended Complaint (Pa164) was properly dismissed.

> . . . the doctrine of *respondeat superior* has no application in civil rights actions. See Bracey v. Grenoble, 494 F.2d 566 (3rd Cir. 1974); Johnson v. Glick, 481 F.2d 1028 (2d Cir.), cert. denied sub nom. Employee-officer John #1765 Badge Number v. Johnson, 414 U.S. 1033, 94 S. Ct. 462, 38 L.Ed. 2d 32 (1973); Jennings v. Davis, 476 F.2d 1271 (8th Cir. 1973); Schumate v. People of State of New York, 373 F. Supp. 1166 (S.D.N.Y. 1974).

Padover v. Gimbel Bros., 412 F. Supp. 920 (E.D. Pa. 1976).

No wrongful conduct, by the respondent, Leonard, has been pleaded. Unless the alleged wrongful conduct has been pleaded, the Complaint must be dismissed. The United States Court of Appeals for the Third Circuit said again, in *Padover, supra:*

> [i]t plainly is the rule in this Court that Section 1983 actions must be specifically pleaded in order to withstand a motion to dismiss, Kauffman v. Moss,

> 420 F.2d 1270, 1275 (3d Cir.) cert. denied, 400 U.S. 846, 91 S. Ct. 93, 27 L.Ed.2d 84 (1970); Negrich v. Hohn, 379 F.2d 213, 215 (3d Cir. 1967); and that broad, conclusory allegations, are insufficient to state a claim upon which relief may be granted, id.; Salvati v. Dale, 364 F. Supp. 691, 700 (E.D. Pa. 1973).

Padover, supra at 924.

Neither was it pleaded that the respondent, Leonard, was an actual participant in any violative conduct. In *Donsco, Inc. v. Casper Corp.*, 587 F.2d 602 (3d Cir. 1978), the United States Court of Appeals for the Third Circuit, said:

> A corporate officer is individually liable for the torts he personally commits and cannot shield himself behind a corporation when he is an actual participant in the tort. See, e.g., Solo Cup Co. v. Paper Machinery Corp., 359 F.2d 754 (7th Cir. 1966); 3A Fletcher's Cyclopedia of Corporations §1158 (perm. ed. 1975). (Pa85-20 to Pa88-8; Pa125-10 to Pa128-20)

The Amended Complaint (Pa164) including, but not limited to, paragraphs 8 (Pa172), 94 (Pa220), 98 (Pa224) and 99 (Pa225). (Pa124-9 to 20) fails to set forth any facts with respect to respondent, Leonard.

The Petitioner acknowledges that respondent, Leonard resigned from Compuscan in June, 1977 (Paragraph 94; Pa87-6 to 13; Pa124-9 to 20) prior to August 19, 1977, the effective date of the petitioner's alleged wrongful firing (Pa109-14 to 16; Pa138-3 to 5). See *Savage v. Kibbee*, 426 F. Supp. 760, 766-67 (S.D.N.Y. 1976).

The dismissal of the Amended Complaint (Pa164) was properly affirmed absent any facts setting forth a justiciable case or controversy against the respondent, Leonard.

CONCLUSION

Petitioner sets forth no special or important reasons for granting of the writ.

Petitioner mischaracterizes the findings and conclusions of the United States Magistrate, United States District Court Judge and the United States Court of Appeals for the Third Circuit.

The affirmance of the United States District Court by the United States Court of Appeals for the Third Circuit was properly reviewed under the scope of review determined as proper by this Court.

The Petition should be denied.

Respectfully submitted,

/s/ Peter W. Till

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